EXAMINING LEGISLATION TO PROMOTE THE EFFECTIVE ENFORCEMENT OF THE ADA'S PUBLIC ACCOMMODATION PROVISIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION
AND CIVIL JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

MAY 19, 2016

Serial No. 114–76

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE
20–167 PDF WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
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UNPRINTED MATERIAL SUBMITTED FOR THE HEARING RECORD

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http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104943

Material submitted by the Honorable Ken Calvert, a Representative in Congress from the State of California. This material is available at the Subcommittee and can also be accessed at:

http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104943

Material submitted by the Honorable Steve Cohen, a Representative in Congress from the State of Tennessee, and Ranking Member, Subcommittee on the Constitution and Civil Justice. This material is available at the Subcommittee and can also be accessed at:

http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104943

EXAMINING LEGISLATION TO PROMOTE THE EFFECTIVE ENFORCEMENT OF THE ADA'S PUBLIC ACCOMMODATION PROVISIONS

THURSDAY, MAY 19, 2016

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE CONSTITUTION AND CIVIL JUSTICE

COMMITTEE ON THE JUDICIARY

Washington, DC.

The Subcommittee met, pursuant to call, at 9 a.m., in room 2141, Rayburn House Office Building, the Honorable Trent Franks, (Chairman of the Subcommittee) presiding.

Present: Representatives Franks, DeSantis, Goodlatte, King, Jordan, Cohen, Conyers, and Deutch.

Staff Present: (Majority) John Coleman, Counsel; Tricia White, Clerk; (Minority) James Park, Chief Counsel; Matthew Morgan, Professional Staff Member; and Veronica Eligan, Professional Staff Member.

Mr. FRANKS. The Subcommittee on the Constitution and Civil Justice will come to order, and without objection, the Chair is authorized to declare recess of the Committee at any time. And welcome to you gentlemen. Sorry for being a little late.

We have called this hearing today to examine H.R. 3765, the ADA Education and Reform Act of 2015, and H.R. 241, the ACCESS Act of 2015, which are two commonsense proposals that require plaintiffs to provide defendants with written notice and an opportunity to correct an alleged ADA violation voluntarily before they may file a lawsuit and force a business owner to incur legal costs.

These bills, which only apply to cases involving public accommodations, would both improve public access for disabled individuals, and eliminate thousands of predatory lawsuits that damage the reputation of the ADA and its overall purpose. When the ADA was signed into law by President George H.W. Bush in 1990, the goal was to provide the disabled with equal access to public facilities.

And in large part, the ADA has worked. It has been hailed as the most sweeping nondiscrimination legislation since the Civil Rights Act of 1964. Unfortunately, enterprising plaintiffs and their lawyers have abused the law by filing a flurry of ADA lawsuits aimed at churning out billable hours and extracting money from

small businesses rather than improving access for the disabled, as the ADA intended. These predatory lawsuits are possible for two chief reasons.

First, 100 percent compliance with the ADA is very difficult to achieve. Even though good faith efforts such as bringing or hiring an ADA compliance expert, a business can still find themselves subject to a lawsuit for almost any minor or unintentional infraction.

According to one ADA compliance specialist, "I rarely, if ever, see circumstances or instances where there is not an access violation somewhere. I can find something wrong anywhere." This makes compliance a challenge, even for those with the very best of intentions.

Second, unlike title II of the Civil Rights Act, the ADA does not currently require any notice before a lawsuit can be filed. This has led to thousands of lawsuits being filed for issues of relatively minor noncompliance, such as a sign being the wrong color, or having the wrong wording. Abuse of the ADA has been noted by Federal judges in numerous cases throughout the country, who have referred to the proliferation of ADA lawsuits as a "cottage industry."

These judges have recognized that the explosion of private ADA litigation is primarily driven by the ADA attorney's fee provision. One Federal court explained that, "The ability to profit from ADA litigation has led some law firms to send disabled individuals to as many businesses as possible in order to have them aggressively seek out all violations of the ADA."

Then, rather than notifying the businesses of the violations and attempting to remedy them, lawsuits are filed. As settlement prior to filing a lawsuit does not entitle plaintiff's counsel to attorneys' fees under the ADA, there is an incentive.

As one Federal judge observed, the result is that the means for enforcing the ADA attorneys' fees have become more important and desirable than the end, which is accessibility for disabled individuals. But the ADA was enacted to protect disabled individuals, not to support a litigation mill for entrepreneurial plaintiffs' attorneys hunting for ADA violations just to file lawsuits.

These bills examined today would help eliminate predatory ADA lawsuits; increase compliance with the ADA by giving businesses the opportunity to fix ADA violations instead of dragging them into litigation; and improve the reputation of the ADA in the eyes of the public; and ultimately improve access for disabled individuals. Lawsuits would be reserved for those instances in which offenders are truly unwilling to make appropriate changes. This would also allow legitimate claims to move through the legal system faster.

Moreover, requiring notification before filing an ADA lawsuit will benefit our economy. Many small businesses have been forced to close because of accessibility lawsuits, and others have unnecessarily spent thousands of dollars litigating claims. Small businesses are critical to America's economic recovery, and should not be burdened by unnecessary litigation.

It is an honor to have Congressman Ted Poe, who introduced 3765, and Congressman Ken Calvert, who introduced H.R. 241,

both here to testify about their respective bills. And I look forward to your testimony and the testimony of our other witnesses.

And with that, I would recognize the Ranking Member of the Subcommittee, Mr. Cohen from Tennessee for his opening statement.

Mr. COHEN. Thank you, Mr. Chair. Colleagues, it is good to have you all here. This is not the first time there has been a hearing on this type of issue. Since 2000, there have been I think three times that bills have been filed and hearings on pre-notification concerning ADA. I have met previously with the folks from the shopping center world, the hotel world, and the disability community, and tried to get a more better grasp on the issue and come up with some type of a reasonable solution. It is difficult to do it.

Folks do not really want to change from their kind of positions they have got. Some of them are based in 1990, and they will tell me that this is what we did in 1990, and it is kind of like, well, that is fine, I was not there in 1990. My job is not to ratify whatever happened in 1990.

But when we look at these cases, private parties are indispensable to having enforcement of any civil rights law. And this is a civil rights law. So we got to have private attorney generals. And private attorney generals have been so effective in many areas in seeing that our laws are effectively enforced. Civil rights in particular, and the ADA. And because of that, there was the agreement in 1990 said that there would not be damages in these cases under the ADA, but they would pay attorneys' fees, and so that gave a bit of compromise that was done.

I understand that there are some folks that think that their attorneys out there are throwing wide nets, and they do not really have a specific target, and I think that is wrong. I definitely think that is wrong. But I have suggested to them that in coming up with some type of solution, and part of that is in the bill I think, is that you have to have specificity in your complaint, and you can tighten that up to see that they have not just a boilerplate complaint, but a specified, specific complaint, although I do not know why Rule 11 has not worked against those type of complaints in the past.

But so be it, maybe that would help. If you get into this situation to where you—obviously the title of this hearing is the Examining Legislation to Promote the Effective—I know it is effective—Enforcement of the ADA's Public Accommodations Provisions. So we have to presume in there that we want to enforce the ADA's public accommodations provisions, although most of what we have got here is not such for enforcement as kind of limiting enforcement and limiting the way we—so that is kind of a juxtaposition in my mind, or a contradiction in the title and what I see as the focus of the legislation.

I have never seen a criminal penalty that would be created to anybody who asserts a civil right, and this would be a case that you could have a civil penalty—a criminal penalty, excuse me, if you do not give your notice provision first. And that seems really harsh, and I think some of the folks have agreed that was a little harsh and maybe further than it should go. And that would be anathema.

But there can be abuses. I think there might be abuses. And if there are abuses, I want to clean them up. And I did that with this Committee, and looking at trolls that are—I know they are not your pals, Mr. Poe, but there are—they may be, but I do not think so—in Marshall County, Texas deal, and they are just kind of—that is not necessarily great, we are all there.

So I have suggested, if you want to amend this and have pre-suit notifications, that you ought to have stuff that also rewards the good guys that clean up the mess after the 120 days, and everybody says, "Oh, the good guys will come forth and get notice," and that is what you want to get if you want the mirror or the signs or the rails or whatever taken care of. And if the good guys do it, make substantial clients, great.

But if they do not, you got bad actors, or if they just kind of lollygag, or they do not do substantial whatever, then I think you got to have a stick. And if you are going to change this, you got to have a stick to see that the bad guys get punished somehow, and I am not quite sure how you do it, but there has got to be something to those people not just to give them this notice provision and time to, you know, kind of maybe be dilatory, but punish them for not being good guys.

And one of my thoughts was to give some kind of damages, some liquidated damages, maybe some amount that is equal to or some multiple of what it requires to fix the area, or maybe there would be some other kind of damages we could come up with to punish the owners that are not the good guys. You have got to have consequences for those people, and otherwise they are just getting a benefit, and they are not being the folks that I know Mr. Poe and Mr. Calvert are interested in helping through this action.

And the folks with the ADA community, I mean they want like I want the ADA enforced. And this is not about attorneys. This is about ADA provisions. But the attorneys do bring the cases, and with the notice provision, they do not have—and they are not getting attorneys' fees. They bring a problem to the attention of the business community and they clean it up, and the other side gets nothing for it, there is—unlikely there is going to be a continued interest in those people, the attorneys, to follow through and help in giving the notice provisions, advising the clients, and trying to cure problems with the ADA.

That is just the way the system works. People have got to have some skin in the game. And you are taking the skin of the game out. And so that is going to hurt, I think, the enforcement here unless we come up with something on the back end that maybe kind of makes it a little bit sweeter.

I am a lawyer, and I have a disability. I helped pass the ADA state statute in Tennessee, and I am interested in seeing it is enforced appropriately and properly, but I am not interested in seeing businesses get these wide nets thrown and be subject to folks looking out more for attorneys' fees than the disabilities community. I think that is a disservice both to the bar association, members of the bar, and to people with disabilities.

So I hope we have a fruitful discussion. I know we will. I hope we can come up with a solution. I think there is some good ideas here, but I do not think the solution is here, and I do think we

need to look at some kind of a stick to make sure the bad guys get slapped so that the good guys can just deal with a notice. With that, I yield back the balance of my time; and that is just the way it is.

Mr. FRANKS. I thank the gentleman, and I would now yield do the Ranking Member of the full Committee, Mr. Conyers from Michigan.

Mr. CONYERS. Thank you, Chairman Franks; and the top of the morning to you and our distinguished witnesses and the guests that have joined us this morning. The three bills that are subject of today's hearings would institute a notice and cure requirement under title III of the Americans and Disabilities Act of 1990. Specifically, these measures would prohibit a lawsuit from being commenced unless the plaintiff first gave the business owner specific notice of an alleged violation, an opportunity to fix or make substantial progress toward remedying such violation.

Let me begin by stating what I said previously when similar proposals were considered by our Committee in the year 2000, and again in the year 2012—I am adamantly opposed to any effort to weaken the ability of individuals to enforce their rights under title III's public accommodations provisions. And here is why.

First, the notice and cure requirement will generate numerous litigation traps for the unwary and ultimately dissuade many individuals from pursuing their legitimate claims. For example, two of these bills would require a complainant provides specific notice of the alleged violation before he or she may file suit. But they fail to define what constitutes specific notice, nor do they define what is substantial progress toward compliance.

As a result, courts will have to struggle to determine what these inherently vague terms mean, thereby creating an open invitation for well-financed business interests to engage in endless litigation possibly that would drain the typically limited resources of a plaintiff.

In addition, these measures would undermine a key enforcement mechanism of the Americans with Disabilities Act and other civil rights laws. The credible threat of a lawsuit is a powerful inducement to businesses to proactively take care to comply with the Act's requirements. Yet a pre-suit notification requirement would create a disincentive to engage in voluntary compliance, as many businesses would simply wait until receiving a demand letter before complying with the law. And this requirement also would discourage attorneys from representing individuals with claims under title III because attorney fees may only be recovered if litigation ensues.

Thus, an individual with a title III claim would not be entitled to recover such fees if the extent of the attorney's representation was limited to drafting the demand letter. Presuit notification would make it even more difficult for disabled persons with valid title III claims to obtain legal representation to enforce compliance with the Act.

Finally, title III, by its terms, is already designed to make compliance relatively easy for businesses. And so I am pleased to join the hearing, and I yield back any time remaining. Thank you, Mr. Chairman.

Mr. FRANKS. And I thank the gentleman. And without objection, other Members' opening statements will be made part of the record.

Before I introduce the witnesses, I would like to submit two statements for the record. The first is a letter from the National Association of Theater Owners in support of H.R. 3765. The second is a coalition letter, also in support of H.R. 3765. Without objection, these statements will be entered into the record.

[The information referred to follows:]

Statement of the National Association of Theatre Owners on H.R. 3765

The National Association of Theatre Owners (NATO) is the largest association of movie theater owners and operators in the world. NATO represents 32,000 screens in all 50 states and U.S. territories. Our members range from national circuits to regional companies to small-business mom-and-pop theaters.

NATO strongly supports H.R. 3765, the ADA Education and Reform Act of 2015. We urge the subcommittee to pass this bill and for this bill to receive full committee consideration and passage.

The movie theater industry has worked hard to ensure that all patrons, regardless of need, feel welcome in attending our cinemas. From closed captioning and audio description equipment, to special sensory-friendly showings, movie theater owners have sought innovative ways to make our theaters accessible. The industry's commitment reflects its desire for everyone in America to enjoy the experience of a movie on the big screen.

Theater owners are frustrated by the ever-increasing practice of what have become known as "drive-by lawsuits," the practice of identifying technical, easily correctable violations over which an attorney and serial plaintiff can extort a settlement consisting principally of attorney's fees. Unfortunately, these individuals have misused the ADA's intent of removing barriers to access and instead seek the primary objective of a monetary judgment. This practice continues to grow exponentially. In 2014 alone there was a 63% increase in the number of ADA Title III lawsuits filed around the country.

To address this issue while simultaneously upholding the intent of the ADA, theater owners support the creation of a "notice and cure" period. This is a key provision of H.R. 3765. This provision would address this matter by providing a time period for fixing alleged violations of the ADA or making substantial progress to resolve them, ensuring that resources are focused on the appropriate goal of improving access instead of going toward lawsuits masquerading as remedy attempts. If a business refuses to make the required changes once given notice specific enough to identify the alleged violation and opportunity to cure in a reasonable amount of time, then the aggrieved party could still bring forward a suit.

In addition, H.R.3765 would also help improve access in the future by encouraging the Department of Justice to develop a program, in consultation with property owners and representatives of the disability rights community, which would further educate state and local governments and property owners on effective and efficient strategies for promoting access to public accommodations for persons with disabilities.

Once again, NATO urges the subcommittee to pass H.R. 3765 and for the bill to receive full committee consideration and passage.

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May 19, 2016

The Honorable Trent Franks
U.S. House of Representatives
2435 Rayburn House Office Building
Washington, DC 20515

The Honorable Steve Cohen
U.S. House of Representatives
2404 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Franks and Ranking Member Cohen,

On behalf of the countless businesses represented by the organizations listed below, we express our strong support for H.R. 3765, "The ADA Education and Reform Act of 2015."

This bipartisan and narrowly tailored legislation will ensure that the intent of Title III of the ADA is not only preserved but enhanced. It provides improved access to public accommodations for the disability community while simultaneously preventing well-meaning business owners from falling victim to "drive-by" lawsuits -- the practice of identifying technical, easily correctable violations to extract a settlement consisting principally of attorneys' fees.

From 2013 to 2014, the number of ADA Title III lawsuits -- those dealing with public accommodations -- surged by more than 63%. In many cases, a single plaintiff filed dozens, even hundreds, of cases across a geographic area alleging violations under the ADA. Often without the resources to contest the suit or even verify the standing of the complainant, thousands of businesses are left paying significant legal fees. The ADA was intended to improve access for the disabled, not to line the pockets of unscrupulous attorneys.

H.R.3765 recognizes that alleged ADA access violations could be addressed more effectively by providing a "notice and cure" provision. This simple, common sense approach would allow a business to actually identify and correct alleged ADA violations before engaging in an unnecessarily lengthy and costly settlement process. By removing the current incentives to merely seek payment of legal fees, the emphasis can once again be placed on compliance and improved access.

The undersigned organizations are committed to creating a safe, welcoming environment for those whom they serve and acknowledge the tremendously positive impact the ADA has made in our society. We believe H.R. 3765 is needed to ensure that resources are focused on improving access while protecting businesses from abusive lawsuits. We encourage the Judiciary Committee to favorably report the bill as soon as possible.

Thank you for your leadership on this issue.

Sincerely,

American Hotel and Lodging Association

American Resort Development Association

Asian American Hotel Owners Association

Building Owners and Managers Association (BOMA) International

International Council of Shopping Centers

International Franchise Association

NAIOP, Commercial Real Estate Development Association

National Apartment Association

National Association of Convenience Stores

National Association of Theatre Owners

National Council of Chain Restaurants

National Federation of Independent Business

National Multifamily Housing Council

National Restaurant Association

NATSO, Representing America's Travel Plazas and Truck Stops

Retail Industry Leaders Association

U.S. Chamber of Commerce

Mr. FRANKS. So let me now introduce our witnesses. We have two very distinguished panels today, and I will begin by introducing the first panel of witnesses.

Our first witness is Representative Ted Poe. Mr. Poe represents Texas second district, and is a Member of the Judiciary and Foreign Affairs Committee. And we are glad to see you, sir.

And our second witness is Representative Ken Calvert. Mr. Calvert represents California's 42nd Congressional district and is a Member of the House Appropriations Committee. And I am glad you are here.

So I would now recognize our first witness, Congressman Ted Poe. And if you will turn that microphone on, I know you would—yes, sir.

TESTIMONY OF THE HONORABLE TED POE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. POE. Thank you, Mr. Chairman. Thank you for allowing me to be here. I thank the Ranking Member. And also I would like to thank Congressman Calvert for his work on this issue for a good number of years.

As the Chairman has pointed out, or has pointed out in the past, I am a former judge, prosecutor, and lawyer. I have been in the legal profession for almost 40 years. And this is a situation where this particular hearing that we are having deals with, I think, abuse of a good law. I believe strongly in the ADA. And it needs to be always enforced.

And the goal of the legislation is to make sure that when there is a violation anywhere across the fruited plain, that the violation gets fixed, so that there is accommodation for the citizen to get into that business.

But the legislation hopes to prevent what is occurring, that there are lawsuits being filed, not to get accommodation for the citizen, but to get money so that people settle and that alleged violation may or may not ever be addressed. And what happens is that lawyers are making a lot of money of these—what I think are frivolous lawsuits, to the detriment of the person who is actually being prohibited from going into some businesses, because the goal is not being reached to allow accommodation.

What is happening is lawyers are filing lawsuits, businesses settle rather than go to court, and the lawyer gets we do not know how much of that money. So in the last 10 years, these frivolous lawsuits have been filed under the public accommodations section of the ADA. Some of these lawsuits are in my opinion shakedowns for businesses, and they are using the ADA as a basis to obtain quick settlements rather than go to court.

For example, some of these law firms—and they are specific law firms in different parts of the country that do this—they will file notice, or give a letter stating that there is not a proper pool lift in a particular motel or hotel. And many of these—some of these hotels do not even have a pool, or these motels. But the businesses settle rather than go to court because of the cost of litigation. And that is the motivation of these lawsuits.

And we are talking about settlements of around $5,000 apiece. Often, the same individuals or organizations who are making many

of these claims go from business to business, and it is a business model that is been working especially in the last 2 years, where 10,000 of these lawsuits have been filed.

In Florida, a plaintiff named Howard Cohen—no relationship to the Ranking Member—has filed 529 of these lawsuits; in California, Martin Vogel has filed 124; in Pennsylvania, Christopher Mielo has filed 21 of these lawsuits; and in some cases, like Howard Cohen: he sued the Marquesa Hotel in Key West for an alleged violation of their pool, despite the fact he was never a registered guest at the hotel. Sounds somewhat suspicious.

The ADA expert who actually wrote part of the ADA bill, Bill Norkunas, helped the hotel fight in this particular case. And he stated that Cohen was essentially operating "a continuing criminal enterprise that boils down to extortion." That does not get people into these motels. It does not accommodate these individuals. It allows for, as he said, shakedowns for money to be collected by these—as I think they are—ADA trolls.

And some of the letters and notices are so nebulous that the person receiving the notice does not even know what the violation was. We have a realty company in Houston manages many shopping malls, and in one particular shopping mall there is 40 parking places that are painted blue and ADA compliant, but they are still sued because the violation does not allege—or the letter does not allege what the specific violation is.

So this bill will require basically three things. That they be put on notice so that they can fix the problem before there is a lawsuit—if that is the goal, to fix the problem, put the business on notice. If the business does not respond to this notice within 60 days, lawsuit commence. If the business then does not fix the problem with 120 days—and I think that can be worked on, how many days—file the lawsuit. That does not prohibit the citizen from filing and getting their day in court.

But if we want to fix the problem, let's fix the problem. It also allows for arbitration if the sides want to arbitrate. It is not required under the law. It is voluntary. And it also requires that the Justice Department come up with some very working with the industry and the people in the ADA community, different models on how they can educate all businesses throughout the country on what the ADA says, and how they can comply with the law as it is written.

So that is why that this legislation is—it is to put them on notice, fix the problem, get it ADA compliant. It is not to really allow for these frivolous lawsuits to be—the money going to I think the attorneys rather than fixing the problem. And I will yield back my time, and that is the way it is. For the Chairman.

[The prepared statement of Mr. Poe follows:]

May 19, 2016

Statement by:

Representative Poe on "H.R. 3765 ADA Education and Reform Act 2015"

Before the Subcommittee on Courts, Intellectual Property and the Internet

For the hearing "Examining Legislation to Promote the Effect Enforcement of the ADA's Public Accommodation Provisions."

I would like to thank Chairman Franks and Ranking Member Cohen for inviting me to testify today on H.R. 3765, the ADA Education and Reform Act of 2015.

H.R. 3765 is a common sense, bipartisan bill that aims to ensure access to public accommodations for all citizens while curbing some of the abusive practices that have become common in recent years.

Within the past 10 years or so, there has been a strong uptick in frivolous lawsuits filed under the public accommodation section of the Americans with Disabilities Act (ADA). Let me be clear, these are often illegitimate lawsuits. These are individuals who are shaking down business, sometimes without even visiting the locations, by sending them phony demand letters alleging a violation of the ADA. Common practices include alleging that a pool does not have the proper pool lift (sometimes even at properties that do not even have a pool) or other vague alleged violation. Often, the businesses are so confused or frightened of litigation that they will simply pay instead of risking going to court. In these instances, the motivation is not to fix any alleged violations; it is to intimidate businesses into settlement.

Often, it is the same individuals or organizations who are making many of these claims. The business model has been working so well it has become a cottage industry. For example, in Florida, a plaintiff named Howard Cohan filed 529 such suits. He is not alone. In California, a plaintiff named Martin Vogel filed 124 suits. In Pennsylvania, a plaintiff named Christopher Mielo brought 21 lawsuits. In New York, a plaintiff named Zoltan Hirsch brought 24 lawsuits.

In 2015, Howard Cohen sued the Marquesa Hotel in Key West for an alleged violation at their pool despite the fact he had never been a registered guest at the hotel. ADA expert Bill Norkunas, who wrote the original ADA and helped the hotel fight this case, stated that Howard Cohan was essentially operating a "continuing criminal enterprise that boils down to extortion."

Individuals like this are not out to provide public accommodation, they are out for their own profit.

H.R. 3765 takes a series of steps to help curb this abuse of the ADA and to ensure that all citizens have equal access to public accommodations. H.R. 3765 requires the Disability Rights Section of the Department of Justice to consult with property owners and the disability rights community and develop a program to educate State and local governments and property owners on effective and efficient strategies to promote access to facilities by disabled persons. This section is intended to promote compliance by getting business and the disability rights community all on the same page so that issues can be resolved quickly and easily without excessive litigation.

The bill also prohibits sending a demand letter for an alleged violation unless the letter includes specific information such as the circumstances under which an individual was actually denied access, the address of the property, and whether or not a request was made to remediate the alleged issue. This section will prevent scam artists like Howard Cohan from sending hundreds of demand letters to businesses he hasn't even visited in an attempt to solicit settlements. I am open to clarification with the language of this section if necessary.

Section 4 of the bill provides that after an owner and operator are given written notice of an alleged violation they have 60 days to respond in writing to that notice and outline how they plan to remedy the situation, followed by 120 days to make the necessary changes. If the business owner does not complete either one of those steps, the plaintiff may then go to court to commence litigation. This section strikes a thoughtful balance between giving businesses a reasonable time to remedy an alleged violation while also ensuring that a lawsuit may still be filed if a business either refuses or does not reply to a request for a remedy.

Section 5of the bill directs the Judicial Conference of the United States to consult with property owners and representatives of the disability rights community to develop a model program to utilize alternative dispute resolution mechanisms to resolve these kinds of claims. These mechanisms would be completely voluntary.

This legislation enjoys wide bipartisan support and has been endorsed by the American Hotel and Lodging Association, International Council of Shopping Centers, National Apartment Association, National Federation of Independent Businesses, National Restaurant Association, and the Retail Industry Leaders Association among others.

I appreciate the opportunity to testify today and I look forward to any questions.

Mr. FRANKS. And I thank the gentleman. And I would now recognize our second witness, Representative Calvert. And, sir, if you would make sure that microphone is on.

TESTIMONY OF THE HONORABLE KEN CALVERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CALVERT. Thank you, Mr. Chairman, distinguished Members of the Subcommittee on the Constitution of Civil Justice. I thank you for the opportunity to testify today on H.R. 241, the ACCESS Act. As you know, the ADA has been mentioned as undoubtedly one of the most important pieces of civil rights legislation that we passed in this country. We can all agree that providing all Americans with access to public accommodations is an invaluable legislative objective. The purpose of ADA is to ensure access to disabled—to the public accommodations, provide appropriate remedial action for those who have suffered harm as a result of noncompliance.

Although there are times when litigation by harmed individuals is necessary, there is an increasing number of lawsuits brought under the ADA that are based upon a desire to achieve financial settlements rather than achieve the appropriate modifications for access. These lawsuits filed by serial litigants, often referred to as drive-by lawsuits, place exorbitant legal fees on small business. Oftentimes business owners are even unaware of the specific nature of the allegations brought against them.

In early 2011, frivolous ADA lawsuits against small businesses reached an all-time high throughout California. As a result, my good friend and colleague, former Congressman Dan Lungren, championed the issue and introduced the original ACCESS Act in the 112th Congress. I was pleased to have been afforded the opportunity to take over the legislation for reintroduction beginning in the 113th Congress.

In January 2015, I reintroduced the legislation H.R. 241, the ACCESS Act. H.R. 241 is a cost-free common-sense piece of legislation that would alleviate the financial burdens small businesses are facing while still fulfilling the purpose of ADA. Any person aggrieved by a violation of ADA would provide the owner or operator with a written notice of violation specific enough to allow such owner or operator to identify the barrier to their access.

Within 60 days, the owner or operator would be required to provide the aggrieved person with a description outlining improvements that would be made to address the barrier. The owner or operator would have 120 days to make the improvement. The failure to meet any of these conditions would allow the lawsuit to go forward.

Without question, we must ensure that individuals with disabilities are afforded the same access and opportunities as those without disabilities. As a former small business owner and restaurant owner, I personally have had to deal with these serial litigants. And I can say for certain that frivolous lawsuits do not accomplish any goal. Allowing small business owners to fix ADA violations within 120 days rather than waiting for lengthy legal battles to play out is a more thoughtful, timely, and reasonable approach.

While the ADA is a national law, as I mentioned earlier, California has become ground zero for ADA violation lawsuits. In fact, California is home to more Federal disability lawsuits than the next four States combined. A 2014 report determined that since 2005, more than 10,000 Federal ADA lawsuits have been filed in five States with the highest disabled populations, 7,188 of which were filed in California.

As of 2014, according to the U.S. Census Bureau, 31 attorneys made up 56 percent of those Federal disability lawsuits in California. Those figures and the real-life toll it takes on small business owners are why I introduced the legislation to allow for a "fix-it period."

However, it is clear that it is not just a major problem in California. The introduction of similar legislation by the gentleman from Texas, Mr. Poe, shows just that. His legislation authorizes a training education component for affected communies and Certified Access Specialists which I certainly would welcome and embrace as an amendment to my legislation.

This is also a bipartisan issue supported by States. I was pleased to see the California SB 269, the text of which I would like to submit for the record as well as a related article, passed unanimously in the State Assembly and Senate, it was signed into law by Governor Jerry Brown on May 10, 2016, just a week ago. The legislation authored by my friend, a democrat, State Senator Richard Roth, is similar to the ACCESS Act in it allows businesses to take immediate steps to become accessible by providing them with 120 days from receipt of a Certified Access Specialist report to resolve any identified violations without being subject to litigation costs or statutory penalties.

I worry that with California acting to curb these lawsuits, some of these serial litigants will try their trade in other states. Maybe they will move next door to Arizona. Without question, the ACCESS Act would ensure that the ADA is used for its true purpose of guaranteed accessibility to public accommodations for all Americans while eliminating abusive, costly, and unnecessary lawsuits for small business owners.

Once again, I appreciate your time today, and stand ready to assist in any way possible to ensure that this legislation moves forward. Thank you.

[The prepared statement of Mr. Calvert follows:]

Prepared Statement of the Honorable Ken Calvert,
a Representative in Congress from the State of California

Mr. Chairman and distinguished Members of the Subcommittee on the Constitution and Civil Justice, thank you for the opportunity to testify today on the need for legislation to promote the effective enforcement of the Americans with Disabilities Act (ADA) regulations on businesses.

As you know, the Americans with Disabilities Act is undoubtedly one of the most important pieces of civil rights legislation. We can all agree that providing all Americans with access to public accommodations is an invaluable legislative objective.

2015 was the 25th anniversary of the passage of the ADA. Since its enactment, our nation has taken great strides to remove unnecessary obstacles that complicate the lives of the disabled as they go about their daily routines. However, more can and should be done to ensure that the ADA is applied in ways that continue to improve the lives of the disabled, as it was intended, while protecting well-intended businesses from unwarranted, frivolous lawsuits.

The purpose of the ADA is to ensure access for the disabled to public accommodation and provide appropriate remedial action for those who have suffered harm as a result of non-compliance. Although there are times when litigation by harmed individuals is necessary, there are an increasing number of lawsuits brought under the ADA that are based upon a desire to achieve financial settlements rather than to achieve the appropriate modifications for access. These lawsuits filed by serial litigants, often referred to as "drive-by lawsuits," place exorbitant legal fees on small businesses, and often times business owners are unaware of the specific nature of the allegations brought against them.

In early 2011, frivolous ADA lawsuits against small businesses reached an all-time high throughout California, and as a result, my good friend and colleague, former Congressman Dan Lungren (R-CA), championed the issue and introduced the original ACCESS Act (H.R. 3356) in the 112th Congress. I was pleased to have been afforded the opportunity to take over the legislation for reintroduction beginning in the 113th Congress. In January 2015, I reintroduced the legislation as H.R. 241, the ACCESS (ADA Compliance for Customer Entry to Stores and Services) Act.

H.R. 241 is a cost-free and commonsense piece of legislation that would alleviate the financial burden small businesses are facing, while still fulfilling the purpose of the ADA. Any person aggrieved by a violation of the ADA would provide the owner or operator with a written notice of the violation, specific enough to allow such owner or operator to identify the barrier to their access. Within 60 days the owner or operator would be required to provide the aggrieved person with a description outlining improvements that would be made to address the barrier. The owner or operator would then have 120 days to make the improvement. The failure to meet any of these conditions would allow the lawsuit to go forward.

More than ever, it is important that the committee act to markup this legislation. These abuses of the intention of the law must be stopped.

Every year, I take time to meet with representatives from each city within California's 42nd Congressional District. During my meetings in February, an alarming trend became apparent. Small business owners are not the only victims of these drive by lawsuits, but also several cities that I represent have seen a rising number of lawsuits as a result of ADA violations in city parks and facilities. In one instance, a city park had not yet been opened to the public. These cities

were not given an opportunity to respond and address the issue before they entered into litigation, at a cost to local taxpayers.

In a separate instance, an individual utilized the "google street view" feature to "drive" through southern California to determine if small businesses had violated the ADA from the comfort of their own home. The use of the ADA by unscrupulous individuals and trial lawyers to fleece small business owners must be put to an end.

I think we can all agree that we must ensure that individuals with disabilities are afforded the same access and opportunities as those without disabilities. Frivolous lawsuits do not accomplish this goal. Allowing small business owners and cities alike to fix ADA violations within 120 days, rather than waiting for lengthy legal battles to play out, is a more thoughtful, timely, and reasonable approach.

While the ADA is a national law, California has become ground zero for ADA violation lawsuits. In fact, California is home to more federal disability lawsuits than the next four states combined. A 2014 report determined that since 2005, more than 10,000 federal ADA lawsuits had been filed in the five states with the highest disabled populations; 7,188 of which were filed in California. Violating the ADA in California carries a minimum $4,000 penalty in addition to the plaintiff's legal fees. As of 2014, according to the US Census Bureau, 31 individuals made up at least 56% of federal disability lawsuits in California. Those figures and the real life toll it takes on small business owners, are why I introduced this legislation to allow for a "fix-it" period.

However, it is clear that this is not just a major problem in California. The introduction of similar legislation by the gentleman from Texas, Representative Ted Poe, shows just that. His legislation authorizes a training and education component for the affected community and certified access specialists, which I would welcome and embrace as an amendment to my bill.

This is also a bipartisan issue supported by states. I was pleased to see that California SB 269, the text of which I would like to submit for the record as well as a related article, passed unanimously in the State Assembly and Senate, and was signed into law by Governor Jerry Brown on May 10th, 2016. SB 269 was authored by a friend of mine, Democratic State Senator, Gen. Richard Roth. The legislation is similar to the ACCESS Act in that it allows businesses to take immediate steps to become accessible by providing them with 120 days, from receipt of a Certified Access Specialist report, to resolve any identified violations without being subject to litigation costs or statutory penalties. I worry that with California acting to curb these lawsuits, some of these serial litigants will try their trade in other states.

Without question, the ACCESS Act will ensure that the ADA is used for its true purpose of guaranteed accessibility to public accommodations for all Americans while eliminating abusive, costly and unnecessary lawsuits for small business owners.

Once again, I appreciate your time today and stand ready to assist the committee in any way possible to ensure this legislation moves forward.

Mr. FRANKS. And I thank the gentleman. In fact, I would like to thank both Representative Poe and Representative Calvert for their time and expertise. I am grateful for your testimony. And I would now like to invite the members of our second panel of witnesses to come forward.

I want to welcome all of you.

Our first witness on this panel is Lee Ky. Ms. Ky operates and manages a donut shop owned by her mother. Her family's business has been the subject of abusive ADA lawsuits.

Our second witness is Mili Shah. Ms. Shah is an attorney and a hotel owner in Atlanta, Georgia.

Our third witness is Kelly Buckland. Mr. Buckland is the executive director of the National Council on Independent Living. And our fourth and final witness is David Weiss. Mr. Weiss is executive director, executive vice president, and general counsel of DDR Corp, a company that owns and manages retail properties.

Each of the witnesses' written statements will be entered into the record in its entirety, and I would ask that each witness summarize his or her testimony in 5 minutes or less. To help you stay within that time, there is a timing guide in front of you. The light switch from green to yellow indicates that you have 1 minute to conclude your testimony. When the light turns red, it indicates that the witness' 5 minutes have expired.

Before I recognize the witness, it is a tradition of this Subcommittee that they be sworn, so if you would please stand to be sworn. For those of you that cannot stand, just—do you solemnly swear that the testimony that you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Let the record reflect that the witnesses answered in the affirmative. I would now recognize our first witness, Ms. Ky, and I would turn that microphone on if you—and pull it close to you.

Ms. KY. Can you hear me?

Mr. FRANKS. Yes, ma'am.

Ms. KY. Thank you.

Mr. FRANKS. Thank you.

TESTIMONY OF LEE KY, MANAGER, DOUGHNUTS TO GO

Ms. KY. Hi. My name is Lee Ky, and I live in Reedley, California. I am here to express my concern regarding the Americans with Disability Act, and how it is being used toward our businesses. I understand that our business must be accessible for all customers. I have been disabled all my life, and I am grateful for the President George Bush, who recognized the needs for accessibility for the disabled community when he signed ADA into the law in 1990.

The public buildings should have accessible entrance and doors for both wheelchairs and stroller users. Public facilities that have an eating area and restroom should be accessible with tables wide enough and high enough for a wheelchair to fit.

The eating area should not be designated just for the disabled people. An eating area should not have a sign that say "for wheelchair only." Accessible buildings allow people with disability to become more independent and self-sufficient. As for me, I appreciate business that have accessible facility.

But personally, it does not matter if the grab bar is at 37 inches or at 32 inches on either side as long as it is providing and is there and when I need it. All business owners have to recognize the needs for all customers.

For example, many businesses provide carpet or rubber mat at the entrance outside or inside to prevent able-bodied customers from slipping. Many business owners are not aware of the changes or new regulation related to ADA. Not all businesses are up to date—up to code with the ADA guidelines of the ADA regulations, because due to lack of information from our city, State, also Federal, not informing the public regarding the changes.

My mother has two donut shops, and has been sued at both location for alleged ADA violations. It is not fair for business owners to receive a lawsuit package from law firm that is out of our city and county limits. Prior to filing a lawsuit, notification be sent to a business if their facility inaccessible. That mean inside of the building has obstacle or steps, or the entrance into the facility is too narrow.

Now that business facility is not up code with the ADA, therefore the particular places or business should be corrected immediately with penalty. However, my mom's donut shops in the city of Reedley was built in 2000, and do not have architectural barriers. I would know. I am there. All businesses should have 30 days to correct minor violations and 120 days for correct constructional barriers.

In my experience, the carpet or the mats have never become entangled in my wheelchairs. If the ADA regulation remain the same and require business to remove all carpets or mats for the inconvenience of the disabled people, then the ADA will be creating a hazard for the able-bodied person.

We, the disabled community, should not be able to feel segregated from the rest of society. This will create bitterness between the customer and the business. I do not need a sign to inform me that I am disabled and where I should sit. The ADA should concentrate on accessible curbs and ramps that do not wrap around the building and the back-door access only.

Generally, when I enter through the back door, I feel like business are embarrassed or ashamed to associate with me because of my physical limitations. This is understandable to a point, because there are a few disabled individuals, including lawyers, that make it their personal mission in life to collect money from businesses that they have never been to. It seems this handful of lawyers think that they are only helping the disabled community—that they are helping disabled community.

Moreover, they are separating the disabled community and the able community. The lawyers are causing the able-body community to dislike the Americans with Disability Act. This makes the rest of small business owners, who are trying to earn an honest living, look bad.

Throughout my life, people are generally are very helpful. When I am out and about in the community, people offer their kindness to assist me. Whether I accept or decline is up to me. I also have a voice. If I need assistance, I can ask for help. I do not want business owners to cringe when they see me enter their establishment.

Personal experience: I was at downtown state capitol and had to use a restroom. I spotted a bar and a restaurant and I asked if I could use the restroom. Then they asked me if I am going to buy a drink. My aid responded, "No, she does not drink. But she need to go to the restroom." No, they did not give me permission to use the restroom.

Since the ADA lawyers are going to sue small business, they are posting sign on their windows: "No Public Restroom." I would like to see the ADA regulation of Federal law to be fair and not be taken advantage of or misused by people that know the laws, such as lawyers and certified access specialist person.

I believe our elected official and city inspectors should inform the public of all new laws and changes. If this is unnecessary, money-hungry ADA lawsuits continue, many business will be forced to shut down and there will be many empty buildings in our community because they do not have the money to pay off the lawsuit.

To me, this is wrongdoing and misusing the ADA. I noticed that Governor Jerry Brown signed SB 269, which eliminate minimum statutory damages for certain minor or technical violations of the ADA. In my opinion, lawsuit is still a lawsuit. Does not matter if the amount is reduced. Thank you.

[The prepared statement of Ms. Ky follows:]

Prepared Statement of Lee Ky, Manager, Doughnuts To Go

May 19, 2016

Statement by:

Representative Poe on "H.R. 3765 ADA Education and Reform Act 2015"

Before the Subcommittee on Courts, Intellectual Property and the Internet

For the hearing "Examining Legislation to Promote the Effect Enforcement of the ADA's Public Accommodation Provisions."

I would like to thank Chairman Franks and Ranking Member Cohen for inviting me to testify today on H.R. 3765, the ADA Education and Reform Act of 2015.

H.R. 3765 is a common sense, bipartisan bill that aims to ensure access to public accommodations for all citizens while curbing some of the abusive practices that have become common in recent years.

Within the past 10 years or so, there has been a strong uptick in frivolous lawsuits filed under the public accommodation section of the Americans with Disabilities Act (ADA). Let me be clear, these are often illegitimate lawsuits. These are individuals who are shaking down business, sometimes without even visiting the locations, by sending them phony demand letters alleging a violation of the ADA. Common practices include alleging that a pool does not have the proper pool lift (sometimes even at properties that do not even have a pool) or other vague alleged violation. Often, the businesses are so confused or frightened of litigation that they will simply pay instead of risking going to court. In these instances, the motivation is not to fix any alleged violations; it is to intimidate businesses into settlement.

Often, it is the same individuals or organizations who are making many of these claims. The business model has been working so well it has become a cottage industry. For example, in Florida, a plaintiff named Howard Cohan filed 529 such suits. He is not alone. In California, a plaintiff named Martin Vogel filed 124 suits. In Pennsylvania, a plaintiff named Christopher Mielo brought 21 lawsuits. In New York, a plaintiff named Zoltan Hirsch brought 24 lawsuits.

In 2015, Howard Cohen sued the Marquesa Hotel in Key West for an alleged violation at their pool despite the fact he had never been a registered guest at the hotel. ADA expert Bill Norkunas, who wrote the original ADA and helped the hotel fight this case, stated that Howard Cohan was essentially operating a "continuing criminal enterprise that boils down to extortion."

Individuals like this are not out to provide public accommodation, they are out for their own profit.

H.R. 3765 takes a series of steps to help curb this abuse of the ADA and to ensure that all citizens have equal access to public accommodations. H.R. 3765 requires the Disability Rights Section of the Department of Justice to consult with property owners and the disability rights community and develop a program to educate State and local governments and property owners on effective and efficient strategies to promote access to facilities by disabled persons. This section is intended to promote compliance by getting business and the disability rights community all on the same page so that issues can be resolved quickly and easily without excessive litigation.

The bill also prohibits sending a demand letter for an alleged violation unless the letter includes specific information such as the circumstances under which an individual was actually denied access, the address of the property, and whether or not a request was made to remediate the alleged issue. This section will prevent scam artists like Howard Cohan from sending hundreds of demand letters to businesses he hasn't even visited in an attempt to solicit settlements. I am open to clarification with the language of this section if necessary.

Section 4 of the bill provides that after an owner and operator are given written notice of an alleged violation they have 60 days to respond in writing to that notice and outline how they plan to remedy the situation, followed by 120 days to make the necessary changes. If the business owner does not complete either one of those steps, the plaintiff may then go to court to commence litigation. This section strikes a thoughtful balance between giving businesses a reasonable time to remedy an alleged violation while also ensuring that a lawsuit may still be filed if a business either refuses or does not reply to a request for a remedy.

Section 5of the bill directs the Judicial Conference of the United States to consult with property owners and representatives of the disability rights community to develop a model program to utilize alternative dispute resolution mechanisms to resolve these kinds of claims. These mechanisms would be completely voluntary.

This legislation enjoys wide bipartisan support and has been endorsed by the American Hotel and Lodging Association, International Council of Shopping Centers, National Apartment Association, National Federation of Independent Businesses, National Restaurant Association, and the Retail Industry Leaders Association among others.

I appreciate the opportunity to testify today and I look forward to any questions.

Mr. FRANKS. And I thank Ms. Ky. And I now recognize our second witness, Ms. Shah. Ms. Shah, is that microphone on?

Ms. SHAH. Chairman Franks——

Mr. FRANKS. Shah, would you turn that microphone on?

Ms. SHAH. It is on. Chairman Franks, Ranking Member——

Mr. FRANKS. Ms. Shah, you may have to bring that closer to you. I am not sure what——

Ms. SHAH. Can you hear me?

Mr. FRANKS. Yes, ma'am.

TESTIMONY OF MILI SHAH, HOTEL OWNER AND ATTORNEY

Ms. SHAH. Here we go. Chairman Franks, Ranking Member Cohen, and distinguished Members of the Subcommittee, thank you for the opportunity to testify today. It is an honor to appear before you to share my story.

My name is Mili Shah, and I am a second-generation hotelier and attorney from Georgia. My parents migrated from India in the 1980's, and bought their first hotel in Milledgeville, Georgia. I spent the first 8 years of my life on the third floor of Days Inn, a place I called home. Thirty years later, my family owns several hotels that employ nearly 400 people.

I, personally, own two hotels in Atlanta, Georgia, that amount to nearly 150 guest rooms and employ over 20 dedicated employees. I am also here representing the Asian American Hotel Owners Association. AAHOA members own over 40 percent of all hotels in the United States and employ over 600,000 American workers, accounting to $10 billion in payroll annually.

Recently, small businesses have come under attack by unscrupulous attorneys and professional plaintiffs seeking to make a quick buck. To advance their corrupt goals, these bad actors manipulate one of the most important civil rights laws in our country, the Americans with Disabilities Act. I was recently sued for allegations and violations of the ADA at my hotel in Atlanta. I was surprised to think that a guest at my hotel was denied service.

I contacted the general manager to learn that the plaintiff had never actually stayed at our hotel, nor was there any evidence that he or his attorney had visited the property. The claims in the complaint were extremely vague and general. Among several broad issues, he stated a failure to provide accessible entry into our hotel's pool.

My swimming pool at my hotel has been closed since the day I purchased it. It is empty and covered with a tarp. Was I being sued for failing to provide entry into a part of my hotel that has always been closed to the public?

I researched the plaintiff and his attorney and found that they have sued nearly 100 businesses, and each suit is almost identical. In fact, the same plaintiff and the same attorney has sued my father with the same complaint at one of his hotels. It is clear that this plaintiff has no desire to stay at the properties, and that the attorneys are using him as a proxy.

I now have two options. I can either fight the suit, subject my business, employees, families, to months of intrusion and litigation, and pay thousands of dollars in defense fees. Or, I can settle with

the plaintiff and pay his attorney thousands of dollars, in which the attorney will likely be the only one with the financial gain.

We cannot afford to pay out settlement after settlement and defend against meritless suits aimed at preying on our fears. Hoteliers are targeted because so many of us are minorities. Settling would imply that I am guilty of violating a civil rights law. It would send a signal to my customers that my hotel is substandard and that I do not care for my guests. An adverse decision could impact my ability to attract new customers and to finance additional properties and grow my business. It is a no-win solution.

We need to find a solution that discourages attorneys from abusing the ADA for dishonest purposes. H.R. 3765, the ADA Education and Reform Act, is a vehicle that balances the important protects conferred by the ADA with affording small business owners the opportunity to address any issues that may exist. The bill requires a detailed description of a potential problem, a requirement to provide notice, and a cure period in order for the owner to recognize and address the areas of concern. It will also provide a collaborative solution that promotes improved accessibility.

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify before you today. I appreciate your listening to how an unscrupulous attorney has targeted me and several others in an effort to extort money under the guise of promoting accessibility under the ADA. We are hoteliers. We are in the business of hospitality. The crux of our industry is to provide a welcoming, comfortable, and enjoyable environment for all of our guests.

I ask you to consider my story when evaluating H.R. 3765. Please help protect small business owners like myself who simply want to run our business free from fear that the next envelope we open might be a lawsuit that closes the doors to our hotels. Thank you.

[The prepared statement of Ms. Shah follows:]

"Examining Legislation to Promote the Effective Enforcement of the ADA's Public Accommodation Provisions"

House Committee on the Judiciary
Subcommittee on the Constitution and Civil Justice

Testimony of Mili Shah
Hotel Owner and Operator

May 19, 2016

Chairman Franks, Ranking Member Cohen, and distinguished members of the Subcommittee, thank you for the opportunity to testify today. It is an honor to appear before you to share my story.

My name is Mili Shah and I am second generation hotelier from Georgia. My family migrated from India in the 1980's and has been in the hotel business for over thirty years. I grew up in my parents' first hotel, a Days Inn in Milledgeville, Georgia. It was there, where I learned the important life lessons of hard work and perseverance while greeting customers at the front desk and learning the books. I also learned firsthand how customer service is not only the pathway to a successful business, but also a hallmark of the industry.

I am also here representing the Asian American Hotel Owners Association (AAHOA). AAHOA members own over 40% of all hotels in the United States and employ over 600,000 American workers, accounting for nearly $10 billion in payroll annually. My story is remarkably similar to those of thousands of hoteliers and small business owners across the country.

After practicing law at a law firm for a few years, I ultimately decided to return to the family business and become a hotelier like my parents. I now personally own two hotels in Atlanta, Georgia. Between the two properties, we serve nearly 150 guest rooms and employ over twenty dedicated employees. My family also owns several hotels in the Southeast and employs nearly 400 people. Whether it is a family or a business traveler staying at our properties, we are in the business of hospitality and we make it our daily goal to make sure that everyone's stay is comfortable and enjoyable. Ensuring customer satisfaction and guest service is truly the essence of our business.

Recently, other small businesses have come under attack by unscrupulous attorneys and serial plaintiffs seeking to make a quick buck. To advance their corrupt goals, these bad actors manipulate one of the most important civil rights laws in our country, the Americans with Disabilities Act (ADA). I am appalled by the acts of these attorneys who are using disabled Americans to extort thousands of dollars in settlements for hardworking small business owners like myself.

The intent of the ADA has always been to prohibit discrimination and to ensure all Americans have equal opportunities. Unfortunately, the law has become a weapon for scheming lawyers seeking to squeeze small business owners into quick settlements.

Last year, I learned that I was being sued for alleged violations of the ADA at my hotel in Atlanta. I was devastated to think that a guest at my hotel was denied service and had a poor experience because of some issue he may have faced at my hotel. I immediately contacted the general manager to learn when the plaintiff in the suit had stayed at our property and to find out as much as I could about his visit. I was very surprised to find out that he never had a reservation and never actually stayed at our hotel.

I then began to look closely into the accusations the plaintiff and his attorney made against my property. The claims he made seemed peculiar from the beginning because many of the issues were written in extremely vague and general terms. He described improper compliance in our parking lot, inadequate signage, and a failure to provide accessible entry into the hotel's pool. While each of the allegations did not seem to address our hotel property, the last issue really raised red flags with me. The swimming pool at my hotel is closed. It is empty and covered with a tarp. In fact, since I have owned the property, it has never been open as we noticed our guests have not requested it and the franchise does not require it. As a result, being sued for failing to provide entry into a part of the hotel that is closed was shocking.

I also did some research into the plaintiff and his attorney and found that he has sued nearly 100 other businesses and each suit is nearly identical! In fact, the same plaintiff and his attorney has sued my father at one of his hotels! In that suit, he made the same, exact accusations. It is clear that this plaintiff had no desire to stay at the properties he targets and makes claims that do not apply to the specific properties.

In my case, I am left with a difficult choice. Either I can fight the suit, subject my business, employees, and family to months of intrusion and litigation, and pay thousands of dollars in defense fees. Alternatively, I could settle with the plaintiff and pay his attorney thousands of dollars, in which the attorney will likely be the only one with the financial gain. It is a no-win situation. Worse, is that nothing prevents this plaintiff and his attorney, or anyone else seeking to exploit the ADA for personal gain, from suing my business under the same allegations. In fact, the same attorney and the same plaintiff could simply file the exact same lawsuit and extort even more money from me.

I contacted my insurance company and they agreed to help me defend against these baseless accusations because they are familiar with this plaintiff. After months of pre-litigation, I learned from my attorney that the judge had dealt with so many cases involving this plaintiff and attorney that he forced us to mediation. It would be easy to settle and end this issue now. However, doing so is exactly what this attorney wants and it will only encourage him to continue to target me and other hoteliers. In addition, settling would imply that I am guilty of violating a civil rights law. It would send a signal to my customers that my hotel is substandard, that I do not care for my guests, and it could impact my ability to attract new customers. An adverse decision may also impact my ability to finance additional properties and grow my business.

As I reached out to my colleagues, I learned that these predatory practices by crooked attorneys and serial plaintiffs against hoteliers and small businesses have become a cottage industry across the country. In fact, I understand there have been over 10,000 of these types of suits in the last

two years alone. In these cases, the primary goal is to extract as much money as possible as opposed to focusing on eliminating barriers to access or improving accommodations.

Worse and most frightening is that often hoteliers are targeted because so many of us are minorities and first and second generation Americans. Small business owners in my community are terrified to receive legal letters accusing them of wrongdoing. Because of fear and communications barriers, they will often settle quickly for concern over what may happen if they do not. For small business owners like myself, we simply cannot afford to pay out settlement after settlement, and certainly cannot afford to defend against meritless suits aimed at preying on our fears. I know that I will go out of business if I have to defend against many more suits like this one.

I am asking you, as our nation's leaders, to fully understand the scope of this problem and help to find a solution that discourages attorneys from abusing the ADA for dishonest purposes. H.R. 3765, "the ADA Education and Reform Act," is a vehicle that could resolve these concerns. This bill balances the important protections conferred by the ADA, with affording small business owners the opportunity to address any issues that may exist.

H.R. 3765 requires detailed written notice describing a potential problem in order for the owner to recognize and address it. This provision alone would confront the issue of attorneys using intentionally vague descriptions to make finding any potential problem unnecessarily difficult. Further, it would prevent underhanded attorneys from going on a fishing expeditions hoping to find violations.

The bill calls for the notice period to last 60 days, allowing sufficient time for hoteliers to identify any areas of concern on the property and a 120-day period in which to cure the problem. Because this focuses on eliminating barriers, instead of encouraging quick settlements for attorney's fees, it provides a collaborative solution that promotes improved accessibility.

Mr. Chairman, and members of the Committee, thank you for the opportunity to testify before you today. I appreciate your listening to how an unscrupulous attorney has targeted me, my family, and several others, in an effort to extort money under the guise of promoting accessibility under the ADA.

Hoteliers have long supported the ADA because we want to provide a welcoming experience for all of our guests and ensure that our customers can enjoy all of the facilities and amenities at our hotels.

I ask to you to consider my story when evaluating H.R. 3765. Please help protect small business owners like myself who simply want to run our businesses free from fear that the next envelope we open might be a lawsuit that closes the doors to my hotel.

Thank you.

Mr. FRANKS. Thank you, Ms. Shah. And I would now recognize our third witness, Mr. Buckland. And Mr. Buckland, is that microphone close to you and on, sir?

Mr. BUCKLAND. Can you move it a little? Can you hear me, Mr. Chairman?

Mr. FRANKS. Yes, sir.

TESTIMONY OF KELLY BUCKLAND, EXECUTIVE DIRECTOR, NATIONAL COUNCIL ON INDEPENDENT LIVING

Mr. BUCKLAND. Mr. Chairman and Ranking Member Conyers and Members of the Subcommittee, my name is Kelly Buckland. I am the Executive Director of the National Council on Independent Living. NCIL is the oldest cross-disability national grassroots organization run by and for people with disabilities. We go by "NCIL," all right?

NCIL membership includes people with disabilities, Center for Independent Living, statewide independent living councils, and other disability rights organizations. NCIL advances the independent living and the rights of people with disabilities, and we envision a world in which people with disabilities are valued equally and participate fully. Centers for Independent Living address discrimination and barriers that exist in society through direct advocacy.

These barriers are sometimes architectural, but more often reflect attitudes and principles that have been reinforced for generations. They have deterred people with disabilities from working, leaving many in poverty and unjustly detained in institutions.

As my own life experience has proven, with increased opportunities, individuals with disabilities can claim their civil rights and participate in their communities in the same way that people without disabilities do. I broke my neck in a diving accident on July 26th, 1970. I have used a wheelchair ever since.

Coincidentally, the Americans with Disabilities Act was signed into law on July 26th, 1990 by President George H.W. Bush, exactly 20 years to the day after I got my disability. Therefore, I had 20 years of experience living with a disability prior to the Americans with Disabilities Act. And now I have 26 years of experience living with a disability post-ADA. Fortunately, the ADA has literally changed the face of the globe.

Although I am honored to be here, I am here to testify in opposition to these so-called ADA notification bills. As Congressman Sensenbrenner, Conyers, and Nadler know, the original ADA and the 2008 amendments which were passed and signed into law passed because people with disabilities, bipartisan lawmakers, and businesses worked together.

The various efforts to make it harder to bring a title III lawsuit have never followed the same process and never enjoyed support from people with disabilities or the organizations that support them, or the organizations that represent them.

People with disabilities do not want more lawsuits, we want more accessibility. Adding a notification requirement will not make the multiple lawsuit phenomenon go away. It simply sends the message to business owners that they do not have to worry about complying with the ADA until they get a letter. In most parts of

this country, it is very difficult to find a lawyer who is interested in bringing an ADA complaint against a place of public accommodation, because they cannot collect damages.

When the ADA was enacted as a compromise between the disability and business community, the disability community gave up the ability to obtain damages under title III of the ADA by allowing injunctive relief and attorneys' fees. Unfortunately, there are still businesses, and companies who have yet to comply with this important civil rights law even after 26 years.

The problem here that these bills are trying to address have little to do, if anything, with the ADA. Title III again does not provide for damages. Settlements or court orders only can involve attorneys' fees. And in the States that some of the witnesses are from, those States' statutes, like California which has been mentioned, allow the people to get damages. That is why California changed its law. Damages are not allowed in the ADA.

There is no need to change the Americans with Disabilities Act. There is lots of information out there. There is lots of technical assistance people can get on how to comply with the law. There is even a phone line you can call and get information; and there is a website. There is lots of free technical assistance to businesses who actually want to comply with the law.

The ADA does not require businesses to do anything that would be considered an undue burden, which means that it is not readily achievable and—or I mean that it is readily achievable and it can be accomplished without much difficulty or expense. And I just want to say some of the stuff that has been—I am going to not go through the rest of my written testimony.

But some of the stuff that is been talked about around building stuff and people who need to come in compliance—the State that I hail from, Idaho, we changed the building code in the State so that when people do get a building permit, their building is going to be built according to the Americans with Disabilities Act.

And the Act really gives people ranges that they have to put stuff into. Like for instance, that Ms. Ky can fit under this table—I cannot. That is why the Act allows for ranges instead of exact numbers that have to be met.

So with that, Mr. Chairman, I know my time is running out, but just in closing, I would like to recognize Yoshiko Dart, the wife of Mr. Justin Dart, who is known as the father of the ADA, in the building. With that, Mr. Chairman, thank you very much.

[The prepared statement of Mr. Buckland follows:]

Kelly Buckland, Executive Director

National Council on Independent Living (NCIL)

NCIL Testimony to the Judiciary Subcommittee on the Constitution and Civil Justice Witness

Chairman Goodlatte, Ranking Member Conyers and Members of the Subcommittee,

My name is Kelly Buckland, and I am the Executive Director of the National Council on Independent Living (NCIL).

NCIL is the oldest cross-disability, national grassroots organization run by and for people with disabilities. NCIL's membership includes people with disabilities, Centers for Independent Living, Statewide Independent living Councils, and other disability rights organizations. NCIL advances independent living and the rights of people with disabilities, and we envision a world in which people with disabilities are valued equally and participate fully.

Centers for Independent Living are non-residential, community-based, non-profit organizations that are designed and operated by individuals with disabilities and provide five core services: advocacy,

information and referral, peer support, independent living skills training and transition services that facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences with appropriate supports and services. Also included are assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community, and the transition of youth with significant disabilities to postsecondary life.

CILs are unique in that they operate according to a strict philosophy of consumer control, in which people with any type of disability, including people with mental, physical, sensory, cognitive, and developmental disabilities, of any age, directly govern and staff the Center. Each of the 365 federally funded Centers are unique because they are run by people with disabilities and reflect the best interest of each community individually.

Centers for Independent Living address discrimination and barriers that exist in society through direct advocacy. These barriers are sometimes architectural, but more often reflect attitudes and

prejudices that have been reinforced for generations. They have deterred people with disabilities from working, leaving many in poverty and unjustly detained in institutions. As my own life experience has proven, with increased opportunities, individuals with disabilities can claim their civil rights and participate in their communities in ways their non-disabled counterparts often take for granted.

I broke my neck in a diving accident on July, 26th 1970. I have used a wheelchair since. Coincidentally the Americans with Disabilities Act (ADA) was signed into law on July 26th, 1990 by President George H. W. Bush. Exactly 20 years after I became disabled. Therefore, I had 20 years of experience living with a disability prior to the ADA. And now 26 years of experience living with a disability post ADA. Fortunately, the ADA has literally changed the face of the globe.

Although I am honored to be here, I am here to testify in opposition to the so called ADA Notification bills. As Congressman Sensenbrenner, Conyers, and Nadler know, the original ADA and the 2008 amendments were passed and signed into law because people with disabilities and bipartisan lawmakers worked together with the

business community. The various efforts to make it harder to bring Title III lawsuits have never followed the same process and never enjoyed support from people with disabilities or the organizations that support them or the organizations that represent them.

People with disabilities don't want more lawsuits, we want more accessibility. The Department of Justice (DOJ) does some amazing work to enforce the ADA but DOJ's budget is not and will never be big enough to address every ADA violation, so our community relies on people with disabilities who know their rights to challenge violations. Adding a notification requirement won't make the multiple lawsuit phenomenon go away. It simply sends the message to business owners that they don't have to worry about complying with the ADA until they receive a letter notifying them that they are discriminating against people with disabilities.

In most parts of this country it is very difficult to find a lawyer who is interested in bringing an ADA complaint against a place of public accommodation because they cannot collect damages. When the ADA was enacted as a compromise between the disability and business community, the disability community gave up the ability to

obtain damages for public accommodations' failure to comply with Title III of the ADA by allowing only injunctive relief and attorney's fees for violations of that part of the law. Unfortunately, there are still businesses, and companies who have yet to comply with this important civil rights law for people with disabilities, even after more than a quarter of a century has passed.

The problem these bills are trying to address has little if anything to do with the ADA. Title III of the ADA does not authorize damages! Settlements or court orders that involve money damages for accessibility violations are based on state laws in a handful of states, not Title III of the ADA. Thus, adding a notice require requirement before people with disabilities can enforce their rights under Title III will do nothing to prevent businesses from being subjected to damages. In addition, if the accessibility violations in question are truly minor, as the proponents of these bills claim, it would not be difficult for businesses to fix the problem and resolve the issue quickly, with minimal attorneys' fees.

Lawyers who do bring ADA Title III cases already assume the risk that they could lose and be paid nothing, with their only upside

being that they may be awarded fees for their time if they win or receive a small amount of fees if they settle. By making it even more difficult to get paid for enforcing the ADA, the proposed bills builds into the statute more disincentives to enforcement, resulting in less compliance and less accessibility.

There is also free technical assistance available to the public on how to comply with Title III's requirements. The ADA itself expressly requires the Department of Justice, in consultation with other agencies, to assist small and large businesses in understanding their obligations under the law. There are a large number of publications on Title III's requirements and a telephone information line and a web site with a numerous technical assistance materials.

Also, the ADA has several provisions that protect businesses from unreasonable requirements. The ADA does not require any action that would cause an "undue burden" or that is "not readily achievable," which is defined as "easily accomplished and able to be carried out without much difficulty or expense."

The result of these bills would be that there will be much less voluntary compliance with the law and the overwhelming advantage will go to those who choose to ignore the law.

I have experienced discrimination before the ADA was passed and I have experienced discrimination since it was passed. For example recently I went to Virginia Beach for Spring Break. They were promoting Time Shares and if you participated in a presentation, you were provided with a free Dolphin watching tour. The Time Shares were not accessible to wheelchair users. They all had stairs. Disappointed, my family and I were looking forward to the Dolphin watching tour. Alas, they were not accessible either. They stated that they did not take people in wheelchairs. My son was extremely disappointed. I contacted the DOJ and now after very simple and inexpensive changes, the Dolphin watching tour is now accessible to wheelchair users.

As a person with a disability who has seen what our world was like before the ADA and how much our world has changed because of the ADA I would expect congress to make it easier for people to claim their civil rights, not more difficult!

Thank you for the opportunity to provide testimony. I welcome any questions you may have.

Mr. FRANKS. And thank you, Mr. Buckland, and welcome. I would now recognize our fourth and final witness, Mr. Weiss. Sir, is that microphone on, and close?

Mr. WEISS. Yes. Can you hear me?

Mr. FRANKS. All right, yes, sir.

TESTIMONY OF DAVID WEISS, EXECUTIVE VICE PRESIDENT & GENERAL COUNSEL, DDR CORP.

Mr. WEISS. Good morning, Mr. Chairman, Ranking Member Cohen, Mr. Conyers, and Members of the Subcommittee. My name is David Weiss. I am executive vice president and general counsel of DDR Corp. I have been in practice for almost 30 years, and general counsel since 2003. DDR is a New York Stock Exchange-traded real estate investment trust. We own over 350 properties around the country and Puerto Rico, and have over 113 million square feet.

Our tenants are some of the most recognizable national, regional, and local retailers. I am here to testify today on behalf of the International Council of Shopping Centers, or ICSC, the global trade association for the shopping center industry. With over 70,000 members in over 100 countries, they represent a wide variety of owners, managers, and other professionals related to real estate.

First and foremost, let me say that the ICSC vigorously supports both the letter and the intent of the ADA. We recognize and applaud the positive impact that the ADA has had on our society. We also support H.R. 3765, introduced by Congressman Poe and cosponsored by Congressman Peterson, as ways to strengthen accessibility, the primary goal of the ADA.

Frankly, I think the legislation that we are talking about today is misunderstood. There is actually quite a bit of agreement related to the legislation. As Mr. Buckland noted, people with disabilities do not want more lawsuits. They want more accessibility. Frankly, we could not agree more. We all share the goal of more accessibility. We want full compliance. We want it faster, with less cost, and we want more resources, not less, devoted to improving accessibility.

As an industry, our interests are aligned with the goals of the ADA. First of all, and foremost, it is the right thing to do. Many of us have experienced the challenges faced by family and friends who are disabled.

Second, it is in our economic best interest to do so. There is a fundamental misunderstanding and misconception that businesses do not support or want to comply with the ADA. Let me be very clear: more people visiting our shopping centers and properties is a good thing. We work with our tenants inexhaustibly to find ways to encourage more, not less, people to come to our properties, and we spend millions of dollars each year to accomplish this.

Let me be clear again on an area where I think there is also agreement, and that relates to the bad apples. For those persons who flaunt the ADA, they deserve the full weight of enforcement. If they choose to ignore compliance, and a lawsuit and the threat of attorneys' fees as the only way to force compliance, then so be it.

But on the other hand, if a simple notice is the fastest and cheapest way to solve many unintended and often minor areas of

noncompliance, why would we not encourage that? Unfortunately, not everyone agrees with Mr. Buckland. Lawsuits by a small group of lawyers have skyrocketed. Sixty-three percent increase from 2013 to 2014, over 4,700 lawsuits filed in 2015.

Unfortunately, there are some whose interests are not aligned with the ADA. These attorneys take a different approach. They file first, ask questions later. They sue, settle, and move on. Their interest is not in actually improving accessibility but rather only in—in only earning attorneys' fees. Many never visit the property, cannot tell you what violations may be there, and never bother to confirm whether any alleged violations have been resolved.

So why do we support this legislation? Because it gives the good apples a 60-day window to respond to claims without an immediate lawsuit. It gives 120 days for the opportunity to cure any potential violations. I think we can all agree that this is the fastest, most efficient, and most cost-effective way to achieve compliance.

And secondly, let's not forget it also enhances education and training and encourages the use of alternative dispute resolution to actually speed up enforcement.

And then let's also be clear about what this legislation does not do. It does not stop the right to sue for noncompliance. It does not limit the ability to recover attorneys' fees. It does not change the Department of Justice enforcement rights. It does not change State laws. What it will do is encourage compliance and stop the unfortunate abuse of tactics of a few.

With that, I thank you for this opportunity to testify today, and I look forward to answering any questions that you might have.

[The prepared statement of Mr. Weiss follows:]

International Council of Shopping Centers

UNITED STATES
HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON
THE CONSTITUTION AND CIVIL RIGHTS

EXAMINING LEGISLATION TO PROMOTE THE EFFECTIVE ENFORCEMENT OF THE ADA'S PUBLIC ACCOMMODATION PROVISIONS

STATEMENT OF
DAVID E. WEISS
EXECUTIVE VICE PRESIDENT &
GENERAL COUNSEL
DDR CORP.

ON BEHALF OF
THE INTERNATIONAL COUNCIL
OF SHOPPING CENTERS

MAY 19, 2016

TESTIMONY OF DAVID E. WEISS

Good morning, Mr. Chairman and Ranking Member Cohen. My name is David E. Weiss. I am Executive Vice President and General Counsel of DDR Corp. I have been practicing law for almost 30 years, first as a partner in private practice and then subsequently at DDR which I joined nearly 17 years ago. I have served as General Counsel since 2003. DDR Corp. is a NYSE-publicly traded, fully-integrated real estate investment trust that owns and manages value-oriented, open-air retail shopping centers (or "power centers") in 37 states and the Commonwealth of Puerto Rico. The company was founded in 1965 and is based in Beachwood, Ohio, an eastern suburb of Cleveland. We have over 550 employees and operate more than 350 shopping centers in a portfolio covering 113 million square feet of retail space. Our tenants include some of the most recognizable retailers such as Walmart, Target, Ross, TJ Maxx, Ulta, Michaels, Petsmart, Bed Bath & Beyond, and Kohl's, to name a few. I would add that DDR has the privilege of owning shopping centers located in several subcommittee members' districts, including Arrowhead Crossing and Deer Valley Towne Center in Phoenix, Arizona; Willowbrook Plaza and Greenway Commons in Houston, Texas; and Village Square at Golf, Boynton Beach, Florida.

I am pleased and honored to testify today on behalf of the International Council of Shopping Centers (ICSC). Founded in 1957, ICSC is the global trade association for the shopping center industry. Its more than 70,000 members in over 100 countries include

professionals, as well as academics and public officials.

Let me say at the outset that ICSC vigorously supports both the letter and the spirit of the Americans with Disabilities Act (ADA). We recognize the tremendous positive impact that the ADA has had on our society. ICSC also strongly supports Congressman Poe's bill, H.R. 3765, to improve the law and ensure that its primary purpose - - to improve access - - is strengthened. ICSC believes that Congressman Poe's legislation is a reasonable and appropriate response to address an unintended consequence of a provision of the ADA which has developed over time. This unintended result causes persons who aspire to comply with the ADA to spend an inordinate amount of time and money defending lawsuits.

The ADA was the first comprehensive civil rights law enacted to protect disabled persons from discrimination because of their disability. The broad reform of the ADA prohibits discrimination by employers, public entities and private organizations that provide public accommodations and other industry segments through five Titles. Title I is aimed at preventing discrimination in the employment sector; Title II prohibits discrimination by public or governmental entities; Title III prohibits discrimination by private entities that provide public accommodation; Title IV regulates telecommunication services; and Title V contains various miscellaneous provisions for the implementation of the other Titles. Titles I, II and III are the main provisions of the ADA. I am here today to testify regarding Title III, which applies to the private sector and has - - literally and

than 25 years ago. One aspect of the enforcement of the ADA provides advocates for those with disabilities the opportunity to bring lawsuits to compel compliance and to recover attorneys' fees and expenses in the event of even the most minor technical violations. While this remedy was intended to provide a private cause of action, this right - - in practice - - has had the unintended effect of fostering the proliferation of costly litigation focused on minor and technical deviations from the standards and lawsuits that are brought only in the hopes of forcing a monetary settlement without regard to improving accessibility which is at the heart of the ADA. These suits have become the scourge of Title III and all too often create a negative impression about the goals of this important law.

The ADA removes both physical and societal barriers by providing equal access and opportunity to those with disabilities. Title III accomplishes this goal by requiring that "no qualified individual with a disability shall be discriminated against in the full and equal enjoyment of goods, services, facilities, privileges, advantages or accommodations by any person who owns, leases, leases to, or operates a place of public accommodation." A place of public accommodation is a privately-owned place which is open to members of the public and affects commerce. Title III lists 12 broad categories of places of public accommodation covering hotels, shopping centers, museums, movie theaters, restaurants, grocery stores, hardware stores, banks, and amusement parks, etc. Title III eliminates discrimination by requiring existing places of public accommodation to remove physical barriers to access where it is readily achievable to do so and by requiring all new or

individuals with disabilities. Title III also requires property owners and others to make reasonable modifications to their policies, practices and procedures to ensure access by persons with disabilities.

To provide property owners and other persons subject to Title III with guidance on how to design and construct facilities or remove barriers in facilities, the Department of Justice promulgates technical and scoping standards. The original technical and scoping requirements were known as the 1991 ADA Standards for Accessible Design. The 1991 Standards underwent a sweeping change through an administrative rule-making process in September 2010. The most recent standards are known as the 2010 Standards for Accessible Design. The 2010 Standards contain approximately 250 pages of detailed technical literature, dimensions, and diagrams describing in exacting technical detail how components, such as parking lots, curbs, restrooms, stairways, elevators, ramps, telephones, dressing rooms and other parts of a building should be designed and constructed. The technical and scoping requirements of the ADA are very similar to a building code. In addition to the standards, the Department of Justice has published supplemental materials providing guidance on how these standards should be interpreted and implemented. Furthermore, experts in the industry publish books and articles to provide supplemental technical guidance or interpretation on various issues where additional clarification is needed. Consultation with the Code of Federal Regulations, the Federal Register and other secondary materials is routine and common practice to properly understand and implement the highly technical requirements of the ADA. In

requirements.

Complying with the technical and scoping requirements of the ADA is challenging, to say the least. Properties which constitute places of public accommodation, for various reasons, are always in a state of change. For example, hotels and motels are often on routine rehabilitation schedules and shopping centers are regularly remodeled, modified or redeveloped. Properties often change over time without the intentional act of any person. Foundations settle, or a wet summer season or freeze/thaw cycles during winter can cause a parking lot or sidewalk to shift, move or change. These natural occurrences are constant, even if they are undetectable to the naked eye without resorting to measuring devices. Paint for parking spaces fades from year to year and newly placed concrete is chipped by weather, delivery trucks, snow plows or parking lot sweepers. Each and every one of these normal happenings potentially lays the groundwork for a lawsuit claiming a technical violation of the ADA standards.

Additional challenges are found in the regulations themselves. For example, until the 2010 Standards came into effect, all of the required dimensions were subject to conventional industry tolerances, which meant that each of the myriad required dimensions potentially had some acceptable deviation from the standards which would not cause them to be a violation of the ADA. The standards did not, however, indicate what tolerances apply. While the 2010 Standards clarified this point, they still left

what the tolerances were or how they are applied to the standards. For example, asphalt in a parking lot is typically placed with heavy machinery, yet the slope in some areas is not permitted to exceed a mere 2%. Achieving this type of precision with the traditional means and methods of installation is nearly impossible. Given the non-static nature of our properties, the shopping center industry is constantly working to inspect, analyze and, when necessary, modify its properties to ensure ongoing compliance with the ADA building standards.

The problem that the private sector faces is an increasing number of lawsuits, typically brought by a few plaintiffs in various jurisdictions and often by the same lawyers, for very technical and usually minor violations. It has become all too common for property owners to settle these cases as it is less expensive to settle than to defend them, even if the property owner is compliant. It is often too costly to prove that a property owner is doing what is right or required; therefore, the property owner makes a rational business decision, commonly resulting in settlement.

These plaintiffs and their lawyers rarely, if ever, give adequate notice of the underlying issues or concerns to the responsible property owner or operator because there is no incentive to do so – in fact the incentive is just the opposite. The ability to recover attorneys' fees under the ADA has made it more likely that a member of a well-known group of attorneys will identify a willing plaintiff and commence litigation immediately in order to take advantage of the legal fee recovery provision. My experience has been

promptly evaluate and address issues brought to their attention without the need for a lawsuit. Certain plaintiffs and their lawyers know this but the law encourages the filing of a suit first rather than providing advance notice. ICSC believes providing pre-suit notice to property owners would also likely result in a quicker resolution of alleged non-compliance issues. The time period during which a plaintiff files a suit, serves the complaint, the defendant responds and the parties negotiate a settlement is longer than if the plaintiff sent a notice with enough specificity to allow the property owner to correct an issue of non-compliance. The private sector has every incentive to address and remove any claimed barriers to access – the more individuals that can gain access to places of public accommodation the better, because this means that more people and potential customers will visit our properties.

In the vast majority of cases, the first notice of a claimed violation is upon the filing of a lawsuit. These lawsuits seek injunctive relief requiring the defendant to fix alleged violations of the ADA, plus pay attorneys' fees, expert fees and costs. These lawsuits typically allege generic violations, such as "Plaintiff encountered inaccessible parking throughout the property" or "inaccessible curb cuts throughout the property." Attempts to have the plaintiffs plead more detail are usually unsuccessful (not to mention that they drive up the cost of litigation in any event). Often, given the size or nature of the property, this leaves the defendants in the lawsuit unable to determine who owns the property, where the alleged issue is located, or what the problem is with the building component. Almost always, the settlement demand is not commensurate with the work

these claims and discovery is taken, a majority of the violations are based upon technical or de minimis violations for issues requiring a modification as little as 1/4th or 1/8th of an inch.

Litigation decisions are driven by the ADA rather than the facts. This means that if a plaintiff finds a violation, no matter how technical, they have the right to recover attorneys' fees. Conversely, if the defendant prevails, he or she only recovers attorneys' fees if it is determined that the case is frivolous. Since there are literally thousands of components to a commercial property and technical measurements at issue, it is the exception, not the norm, when a court awards a defendant its attorneys' fees. The defendant has no incentive to seek attorneys' fees. This leaves the plaintiffs and their counsel with a significant incentive to file suits.

The number of ADA lawsuits has continued to rise at alarming levels. Title III ADA lawsuits filed nationally in 2014 increased by 63% from the previous year. It is worth noting that the majority of these lawsuits are being filed by the same plaintiffs. Of the more than 4,700 Title III lawsuits filed in 2015, over 1,400 were filed by just eight plaintiffs. The states with the greatest number of suits filed in federal court were:

California - 1,659	Texas - 277
Florida - 1,338	Arizona - 207
New York - 366	

The above cases represent 80% of the federal ADA lawsuits filed in 2015.

Some states had significant increases in the percent of federal ADA law suits filed between 2014 and 2015.

New York	73% Increase
Illinois	190% Increase
Texas	204% Increase
Georgia	380% Increase
Arizona	2,488% Increase

ICSC also recently surveyed its members regarding ADA litigation and found the following:

- Of approximately 1,500 ADA survey respondents, more than half have been sued for alleged violations of the ADA.
- 65% of those respondents who indicated that they have been sued under the ADA did not receive a notice of an alleged violation prior to receiving notification of a lawsuit or demand letter.
- Of those respondents who indicated that they have been sued under the ADA, 75% chose to settle with the plaintiff out of court.
- Following the conclusion of either a settlement or legal proceedings, the respondents estimated that, more than 71% of the time, there was never any attempt made by the plaintiff or the representative of the plaintiff to visit the property to confirm that the alleged violations were corrected.
- Of those respondents who have been sued under the ADA, almost half have been sued by the same plaintiff or law firm more than once.
- Nearly half of the respondents who have been sued under the ADA indicated that the complaints filed in the lawsuit or demand letter did not contain sufficient detail to identify the specific alleged violation(s).

restore necessary balance to Title III ADA litigation. H.R. 3765 does not overturn or preempt state versions of the ADA; it does not take away the right to sue under the ADA; it does not undermine the fee recovery provisions that exist in the ADA. This proposal will facilitate access to public accommodations for the disabled by freeing up resources for compliance with the ADA and improving accessibility rather than needlessly defending lawsuits. H.R. 3765 addresses the abusive actions of a few without altering the fundamental purpose and intent of the ADA.

Section 2 of the bill directs the Disability Rights Section of the Department of Justice to provide educational and training grants to Certified Access Specialists to provide guidance to property owners in order to facilitate compliance with the public accommodations portion of the ADA. ICSC supports this and other efforts to educate property owners regarding the highly technical compliance issues that arise under Title III of the ADA.

ICSC also supports Section 3 of the bill, which permits a fine to be levied if a demand letter alleging Title III violations is found to be overly vague or misleading. If the goal of the ADA is to promote access, property owners should be given specific notice of alleged deficiencies. A lack of specificity and clarity only delays resolution.

Section 4 of H.R. 3765 creates a temporary pause in litigation of up to 120 days to allow property owners to remediate ADA public access violations. Under this section, a

the property owner provides a written description of how the owner will remove any barrier to access that violates the ADA. This temporary pause will allow property owners, after being put on specific notice as to possible ADA violations, to remove - at their own expense - barriers to accessing public accommodations, or make substantial progress in doing so.

Finally, Section 5 of the bill directs the federal courts, in consultation with property owners and representatives of the disability rights community, to use alternative dispute resolution mechanisms to resolve ADA violations for public accommodations. The goal of the model program is to promote access quickly and efficiently without the need for costly litigation.

In conclusion, H.R. 3765 is a "win-win" for all legitimate stakeholders. Simply having notice of claimed violations with a sufficient level of detail and the opportunity to cure prior to filing a lawsuit will eliminate the abusive tactics which have become commonplace. Barriers to access will be removed more quickly. Property owners can re-direct resources from costly litigation to actual remediation of ADA violations. Therefore, ICSC respectfully requests that the Judiciary Committee report the bill as soon as possible.

Thank you for this opportunity to express our views regarding this very important legislation. I look forward to answering any questions you or other members of the

Mr. FRANKS. Thank you, Mr. Weiss. And thank you all for your testimony. We will now proceed under the 5-minute rule with questions. And I will begin by recognizing myself for 5 minutes. And Ms. Ky, if it is all right, I will begin with you.

Ms. Ky, this proposed bill requires a plaintiff to give a business owner notice of an alleged ADA violation and the opportunity to fix that violation before a lawsuit may be filed. As a business owner, as someone disabled, do you believe it is fair to the disabled to require notice and an opportunity to fix a violation before a lawsuit can be filed?

Ms. KY. It is fair to insert issue and ensure it is itemized. The reason—I believe it is fair because there is so many new update, law, regulation that all you had written to—for example, for my mom's shop, there were seven items unnecessary. It was a sticker note that [unintelligible] for the exit sign. The incorrect symbol of the restroom, the doorknobs, the mats—that is simple.

I was not aware of the new regulation. So if you all that making changes, let us know, and this will not happen. If the community—if the citizen knows, if this would not happen. I would like to say something. I do not think your building here is accessible. I went to the woman's restroom. It is not accessible.

And you guys create and make the laws, and your building is not accessible. So how do you expect a normal citizen to follow your rules if you are not doing it yourself?

Mr. FRANKS. Thank you, Ms. Ky. Ms. Shah, critics of legislative efforts to allow for a cure period prior to commencing a lawsuit under title III of the ADA have argued that the property owners have a legal obligation to ensure their property is accessible to the disabled. These critics argue that a notice-and-cure legislation would create a further incentive for property owners not to comply with ADA until they are sued. And how would you respond to that criticism?

Ms. SHAH. Thank you, Mr. Chairman. You know, I would respond to the critics by saying that the fact that they are having an issue with the grace period to begin with shows and implies that they are not here to promote accessibility. All of us here in this room support the ADA, support Americans with Disabilities. We promote it. We think it is great for America.

In fact, we want to fix any issues, because ultimately that attracts customers to our business, and we want to grow our business. So we are automatically incentivized. So a notice-and-cure provision would help us fix any areas of concern, and promote the accessibility versus just the attorneys filing lawsuits immediately to get attorneys' fees.

Mr. FRANKS. Thank you, Ms. Shah. Mr. Weiss, has there been an increase in ADA litigation under title III, and if so, could you provide the Committee with some background on that increase?

Mr. WEISS. Yes. I would be happy to. Yes, the number of cases has grown dramatically over the last few years. And frankly, that is really the driving need for this legislation. This is both a growing and expanding problem, and actually just continues to grow.

As I mentioned in my opening remarks, there has been a 65 percent increase from 2013 to 2014, and the numbers just continue to grow and grow. In particular, there are certain States where these

cases are growing the fastest—California, Florida, New York, Texas, Arizona. Those combined had the largest number of suits filed, over 80 percent of them filed nationwide. California has approximately 40 percent of the lawsuits, but only frankly about 12 percent of the disabled population there. So this is an ongoing and continuing problem.

Mr. FRANKS. Well, thank you, sir. And I will now recognize the Ranking Member, Mr. Cohen, for 5 minutes.

Mr. COHEN. Thank you, sir. Mr. Weiss, is the fact that California has got their State law, and I think I heard that it includes damages—could that not be the reason why there is so many of those cases in California?

Mr. WEISS. No, I do not think so. Obviously, the ADA has been in effect for 25 years. I think we all would agree it is had a dramatic impact across the country, so much so that it is just a part of the way of doing business. In our industry, it becomes second nature. We are constantly updating our properties and ensuring compliance with them. The issues that we are having here are very specific, and this legislation——

Mr. COHEN. Well, let me ask you this. I know we have limited time. Why do you think California is particularly litigious? That is the question.

Mr. WEISS. I cannot tell you exactly why some States over others, but I can just tell you that it is growing nationwide——

Mr. COHEN. But you specifically mentioned Texas, Arizona, California, and Florida. There has got to be some—are those not the States you mentioned?

Mr. WEISS. That is where there are the most cases, but there are cases across the country.

Mr. COHEN. I am hip to that.

Mr. WEISS. Many States are without——

Mr. COHEN. But the fact is there has got to be a reason why those four are more than the other 46. You do not have a thought. Mr. Buckland, do you have a thought?

Mr. BUCKLAND. Mr. Cohen, I do. Those are the States that allow damages.

Mr. COHEN. All four of those States allow damages?

Mr. BUCKLAND. Yeah.

Mr. COHEN. How many other States allow damages? Do you know?

Mr. BUCKLAND. There is about 10 in total.

Mr. COHEN. If there is 10 total, and these are four of them, that seems like what they have got in common, and that is not a national problem. It seems like that makes—it is not—Ms. Shah, you grasp that, do you not?

Ms. SHAH. I am sorry.

Mr. COHEN. You grasp the fact that those four States, 4 of 10, and that that might be the unifying or unique factor that causes the burgeoning lawsuits there and not something with the ADA in general?

Ms. SHAH. Sure, but it is a problem across the United States. You know, there are properties—my property is in Georgia and the same attorney and the same plaintiff have filed the same lawsuit 100 times.

Mr. COHEN. In Georgia. Is it a Georgia lawyer?

Ms. SHAH. Correct, yes.

Mr. COHEN. Let me ask you this. You heard what I was saying in my opening remarks about the possibility of having some type of damages for the folks that do not comply if there was a notice provision. Would you agree that there needs to be some type of a stick to punish more harshly with some sanctions the folks that do not comply within the 120 day period?

Ms. SHAH. Yes, and the whole idea is that you would be able to file the lawsuit. The first——

Mr. COHEN. But that is already available. Should there not be something extra?

Ms. SHAH. Such as what?

Mr. COHEN. Such as sanctions, damages, liquidated damages, some amount of——

Ms. SHAH. Yeah, I mean, exactly. You cannot pull that and impose sanctions. But remember, at the same time, we are also trying to run our business, and so we are doing the best we can——

Mr. COHEN. But you are a good guy. I am talking about the bad guys.

Ms. SHAH. Of course, the bad guys do need sanctions.

Mr. COHEN. Right, so you would agree that—Mr. Weiss, do you agree that that would be something that would make your proposal better?

Mr. WEISS. Well, frankly, let me start on this damages issue, which you have raised before. First of all, we are not talking about making changes, under—fundamental underlying changes, to the ADA. We are talking about legislation which is narrow and focused to a particular abuse for an existing enforcement mechanism. Secondly, I am not sure that damages actually will reduce the problem. In fact, it may well encourage them. More damages means more lawsuits. More lawsuits means more attorneys' fees. It means more time and resources.

Mr. COHEN. But if the damages are only for the—damages are only for the people that did not comply with this program. You know, your program does have a lot of beneficial purposes; yours or Ted's or whoever's it is, but I can see the benefits in getting compliance. But for the folks that do not comply, why not—the damages are not going to be a problem for the good guys. It is only going to be for the bad guys, and bad guys always have to be punished.

Mr. WEISS. I think your underlying assumption is that this is only a damages issue. Take Florida for instance.

Mr. COHEN. No, I am not saying it is only a damages issue. It is probably a damages issue because where the litigation has exploded, but what I am talking about damages is a way to have another lever out there to make people comply. All you have got is the notice.

What you make is harder to bring a lawsuit, and disincentivizes lawyers from being involved in the process, which will probably result in less notice of actual problems. If you are going to do that, do something that does not—you know, you do not want to have overkill and help the good guys at DVR, but not the bad guys at EEQ.

Mr. WEISS. With all due respect, Mr. Cohen, I do not think this inhibits the enforcement of the ADA. I think it actually—it helps enforcement and here is why.

Mr. COHEN. Mr. Buckland, Mr. Buckland——

Mr. WEISS. We could have——

Mr. COHEN. Mr. Buckland, why do you—do you think it inhibits from——

Mr. BUCKLAND. Absolutely, there is no other civil rights statute that requires notice to be able to fix the problem before you can bring suit; no other civil rights. But they are wanting to put it in this one.

I will give you a couple of examples; like I was in Virginia Beach. There is a timeshare down there and if we sat through like a—I am sure a lot of you have experienced this. If you sit through a presentation, they give you some reward, right, so the reward was to be able to go on this whale watching tour.

So we sat through the presentation, me, my wife, and my son sat through the presentation. They gave us our whale watching tickets and, by the way, none of the timeshares—I could not have purchased any of the timeshares because they are all inaccessible. Not a single timeshare did not have a step in front of it. So they are all inaccessible.

So then we go to the whale watching tour and they tell me they do not take people in wheelchairs on their tours.

So I talked to the guy that took the tickets and said, "Are you aware of the Americans with Disabilities Act?"

He said, "Yes, that does not apply to us."

I said, "Where is the manager? Can I speak to the manager?"

"I am the manager."

I said, "You still do not think the ADA applies to you," and he said, "No."

So when I got back home I talked with the Department of Justice and we went into where you work it out between you. We did that. They, with very little expense, built a ramp to the boat. Now they take people with disabilities on their whale tours.

Another one that just happened like very recently, is there is a business association here in Washington D.C. that I went to; could not get in. The front entrance is not accessible. Could not independently enter the building either. I told them all of that. I gave them resources to get information on what the fixes were.

I checked back with them in about two and a half months later to see if they had made any progress on making their building accessible. I got no response, so I waited for about another 2 weeks, sent them another e-mail, asking if they had made any progress; no response. I did that three times with no response. So then I made a phone call. They were not in, so I left a message; no response to my phone call.

Frankly, that is the—most of the responses that you get when you notify people that there is a problem; you do not get any return response. That is what has happened to me over and over.

Mr. COHEN. Thank you sir, I appreciate it and my time is out. Thank you.

Mr. FRANKS. I now recognize the gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. Thank you Mr. Chairman, and I thank the witnesses for your testimony here today. I am just thinking about how the Americans with Disabilities Act in a way changed by what life, and I want to put this narrative into the record. I happened to have been the only public building in the community that was wheelchair accessible right after the passage of the ADA, and so they came and asked me; "Would you be the host of the Republican caucus in your community?"

And I said, "Sure, I am happy to open up my doors and help people out," and then I became the chairman of that caucus, and now here I am in Congress.

So I just slip that in as, I do not know how many different implications there are. I am sure it is affected your lives a lot more than it is affected mine, but it is ironic that, if that meeting had never taken place, who knows what I would be doing today?

So I wanted to ask, and I wanted to ask especially Mr. Buckland, and I would ask if you could be brief in your analysis of this, but you lived through 20 years prior to the ADA in a wheelchair and 26 years afterwards, and you probably did not see the immediate results of that because we had a lot of new construction that took place, and refurbishing that took place. So I do not have any doubt that it changed a lot of accessibility and you have seen incrementally from your eyes.

The question back then in 1990 was, do we require compliance with the ADA only on new construction or also for existing buildings and facilities, and I recall going in and doing curb cuts and making wheelchair accessible, and I am wondering why did we not think of that when we built the sidewalk in the first place?

It was a huge oversight on the part of our society not to see how simple and how cheap that part of the ADA could have been. But what would it be like today, do you think, if the ADA had been written in such a way that new construction complied, but old construction was voluntary? What kind of progress do you think we would have made in the last 26 years?

Mr. BUCKLAND. Mr. Chairman, Mr. King, very little. I mean, if you walk around this town, most of this is old construction. So if we had not applied the ADA to existing structures, nothing here would be—not nothing, but a lot of the buildings here would not be required to comply.

Mr. KING. Okay, so do you think—and these buildings, especially, have got some of the oldest buildings here, and in my neighborhood, it would be different for different reasons. We have a lot of new sidewalks and a lot of new curb cuts would have been done. But I want to ask you on your perspective and you have given it to me and I appreciate it.

And I would like to turn to Ms. Shah, and you mentioned that there are essentially a copy and paste, 100 lawsuits from a single lawyer, and though those lawyers in many cases—it is either you or Ms. Ky—that said that the lawyers had not been in the facility. So I will ask each of you but we will go first to Ms. Shah. What does that list of plaintiffs look like? When you have got a lawyer with 100 suits that are copied and pasted, what does the list of plaintiffs look like on each of those suits?

Ms. SHAH. In my case it is just one plaintiff, and so he is using—the attorney is using that one plaintiff to fish out other properties in the area and slap the same lawsuit on them.

Mr. KING. And have you looked at the plaintiffs in those other lawsuits that were filed by the same attorney? Could it be the same plaintiff in some of those cases or even all of them?

Ms. SHAH. Absolutely, yes. In this case, it is the same. I mentioned that my father received the same lawsuit, the same number of pages, the same attorney, same plaintiff at his property.

Mr. KING. Okay, but there are 98 others out there. What is the likelihood that that same plaintiff has also been utilized by the same attorney in a number of other cases, in addition to you and your father?

Ms. SHAH. There is a likelihood that there is the same plaintiff, same attorney. There is also other plaintiffs and other attorneys. So it is an ongoing case, right? I mean, you can have one plaintiff suing 100 properties using the same attorney, and that same attorney may want to settle 100 properties and you average $5,000. That is a lot of money.

Mr. KING. Okay, so I am just trying to get this concept; how this works in the attorney's office. You have an attorney that is a hotel chasing attorney. And he decides: "I have got a potential plaintiff here. I am going to contact him and the two of us can go together, and now we will file, potentially, 100 lawsuits and you be the plaintiff.

I will be the attorney and we will collect this at collect this money at the expense of the businesses," who never had a chance of a notice to cure; never an opportunity to even know that they were potentially out of compliance with the ADA. So I look at that and have these plaintiffs then—what is the likelihood that the plaintiff had never been in the building before the suit was filed?

Ms. SHAH. I think each case varies. In my case I looked back 1 year to check the reservations; if the first name and last name ever matched, and there was no record of that person ever staying at our hotel.

Mr. KING. Ms. Ky.

Ms. KY. Yes.

Mr. KING. Would you concur with the testimony of Ms. Shah in your experience?

Ms. KY. Yes, on that particular day, this individual sued three locations in our city; same person, and he does not live in the city. On that particular day, I was not at the shop. I came back from doing my errands and I got a package, and I asked everybody, "Who is this person?" No one knew who he was.

I even asked the medical record—a medical facility that does provide wheelchairs, just to make sure if he is, you know, in the register with them or buy anything from them. They do not even know who he is. And recently, they did kind of investigate on this individual. He is able-bodied. He sits in the wheelchair. He goes to places, and he uses wheelchairs to get what he does, and he lift his wheelchair to put back in his truck. He has no——

Mr. KING. Is that not fraud? Would you say that is fraud?

Ms. KY. That is fraud, and that is why we are here is that we need to stop this. We need to stop this fraud. We need to stop this

ridiculous using ADA to get what they want. Like, you know, Mr. Buckland said, that this facility—he contacted three times and they no response. Please, go sue them; double the price, whatever needs to be done. Yes, but, you know, give us a chance.

Like I ask myself or Ms. Shah, that we do not have any barriers in our facility, no barriers; so just because we do not have the information that you folks change it, the lawyers have no right. It is not barriers. If it was barriers, please, come up to us. We have no problem.

Mr. KING. Thank you very much. I thank the witnesses and yield back.

Chairman FRANKS. I thank the gentleman. And I would now recognize the Ranking Member, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Thank you Chairman Franks, and I thank the witnesses.

Could I begin by asking unanimous consent to enter into the record 14 letters from organizations that have a variety of objections to the measure that we are examining today—the Consortium for Citizens with Disabilities, Paralyzed Veterans of America, The National—The Leadership Conference on Civil and Human Rights, and plenty of others? Could I ask unanimous consent? They take strong exception to this measure, and I ask that these letters be included in the record.

Mr. FRANKS. Without objection.*

Mr. CONYERS. Thank you, Mr. Chairman. I wanted to just ask Mr. Buckland if—and we are all friends here—if Mr. Weiss' testimony raised any objections, in terms of your experience as someone that is disabled?

Mr. BUCKLAND. Well, Mr. Chairman and Mr. Conyers, I mean, the whole issue around the written notice, and you have to wait a certain time for it to cure—all that stuff, like I said in my testimony, I think that will incentivize businesses to not do anything until they do get a letter.

So, yeah, I take exception to that. I also think that, like, just naming the number of lawsuits does not mean that is a bad thing. If those businesses were out of compliance, then why is that a problem that they got sued for being out of—for breaking the law? I do not quite understand that. So there was no mention about whether or not they were valid complaints. They were just the numbers. So, I am not sure that that—this results in being a bad thing.

Mr. CONYERS. Would it be helpful if the Committee knew what the results of all those lawsuits were?

Mr. BUCKLAND. Yes, I think it would, and then I also think that the Department of Justice could provide this Committee with some information about how many complaints they have received, what the complaints were about, how the complaints were resolved, that sort of stuff.

Mr. CONYERS. Mr. Chairman, I am hoping that we might be able to follow through on both my suggestion and Mr. Buckland's, in terms of getting a little bit more detail on some of these cases.

***Note:** The material referred to is not printed in this hearing record but is on file with the Subcommittee and can be accessed at:

http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104943

Now, Mr. Buckland, we have four witnesses here this morning. You are the only one that is opposed to this measure, and so I wanted to ask you: what does the pre-suit notification mean for the private enforcement of the ADA, and what would happen if enforcement is left only to the Attorney General if private lawyers stopped bringing cases?

Mr. BUCKLAND. Well, I think you stated the obvious, Mr. Conyers. Like, what will happen if we are—if our ability to file suits is impeded, and we have less enforcement and, like I mentioned before, the businesses will just wait until they get a letter.

Our experience really has been, as I mentioned, it is difficult to find attorneys that will take cases, except for those States that allow damages. And so I think this is really more of a State legislation issue than it is with the Americans with Disabilities Act.

Mr. CONYERS. Yes, I do too. Proponents now of pre-suit notification argue that it is reasonable to give businesses the opportunity to cure a violation before a lawsuit commences. But how might such a notification scheme affect voluntary compliance?

Mr. BUCKLAND. Well, again, it would impede our ability to make businesses comply because you would have that waiting period, the notification. It would dis-incentivize attorneys, but I want to ask the opposite question. Why do they need to be notified? The Americans with Disabilities Act is out there.

There is lots of information about how you comply. I mentioned that before. There are 10 ADA centers, one in each region of the country, and they have expertise on the Americans with Disabilities Act; what it requires to comply. They will even come out to your business and talk to you about what you need to do. So they should be proactive, and they should be—they know the law is there. They should get the technical assistance. They should come into compliance.

Mr. CONYERS. I think that is a very good response, and you have answered all my questions very appropriately. And, Mr. Chairman, I yield back the balance of my time.

Mr. FRANKS. And I thank the gentleman, and I now recognize the gentleman from Florida, Mr. Deutch for 5 minutes.

Mr. DEUTCH. Thank you Mr. Chairman, and thank you for holding this hearing. The Americans with Disabilities Act fundamentally changed our society for the better. It both literally and figuratively opened the doors of public life that had been closed for too long, and I believe that any efforts that we undertake to address abuses under the current law have to protect the progress that has been made, and we have to continue to ensure that our society is open to everyone.

The goal that we all share is widespread compliance, full compliance, with the ADA. Retrofitting older construction, ensuring that all new construction is built inclusively from the start has always been the guiding principle.

I appreciate that the original compromise that created the ADA was designed to balance our national interest in accessibility with a desire to make private businesses allies in this endeavor, rather than our adversaries.

And I do not want to upset the original balance that makes it—that, anyway, would make it harder to work together toward our

common goal of compliance. But I believe that we have to exercise strict oversight to ensure that we are achieving continued progress to accessibility. That is what the ADA is meant to provide, and if abuses of the process work against those goals, then I think it requires us to stop and pay attention.

In Florida, which we talked about earlier, in my own State, more than one in five ADA claims filed last year originated in the southern district of Florida. Businesses have to retain the right to do the right thing, and it has to be an incentive for them to do the right thing. The threat of a lawsuit is powerful, and it works.

But for honest, good faith actors who are making easily correctable small fixes, things that would take a few minutes to remedy, we have to have a process that allows them to make these fixes, to adjust a grab bar, to re-hang a coat hook, and to be able to do it quickly without a lawsuit. I do not take the idea of good faith lightly. It should be difficult, a difficult standard to meet.

It should show that businesses are in partnership with the American people and creating a society that is accessible, and is welcoming to everyone; that public life is for everyone, and we want a society where small businesses can thrive doing business with everyone.

Now, Mr. Weiss, I have been told that some of the worst of the repeat plaintiffs do not even bother to follow up to see if the infractions have been corrected, which tells me that complaints often are about—more about extracting money than about making a facility more accessible.

The code enforcement officer in Delray Beach, in my own part of South Florida, was quoted as saying, "They do not care if you fix it or not. The businesses pay between 5,000 and $12,000, and it goes away. People are taking complete advantage. It is a moneymaker. It has nothing to do with compliance." In your experience, what has been the follow-through of plaintiffs, post-settlement?

Mr. WEISS. I am sorry——

Mr. DEUTCH. Turn up the mic—yeah.

Mr. WEISS. I am sorry to say it is virtually none, and that is part of the problem. We spend millions of dollars ensuring our properties are code-compliant and compliant with the ADA, and we have millions of dollars invested, and then we have attorneys essentially that come to us with their hand out, not knowing—with vague claims of noncompliance.

They do not have specifics, and they never bothered to follow up as long as you have paid to settle the suit. As a follow-up, I guess I would just mention, both in your district, Mr. Deutch, this has become—this is not just the ICSC issue. There are press reports. There was one, in fact, this week of a serial plaintiff filing a thousand lawsuits.

In response to Mr. Cohen's reference to lawsuits in California, California has actually passed two pieces of legislation to actually try to curb the abuse of these lawyers. Even with the damages provision that he thinks will actually help, there are abuses going on, and so California has passed legislation as well, to try to limit the abuses that are occurring there.

Mr. DEUTCH. Mr. Buckland, is there not a difference between a business owner who refuses to include a required number of handi-

capped spaces, or who refuses to make the restrooms accessible, and a business owner who runs a business who has followed all of the technical assistance, as best as he or she could, and the grab bar is two inches too high, or the paper towel holder is a couple of inches off, or the line on the handicapped parking space that is there is drawn slightly crooked? There is a difference between them, is there not, and should we not incentivize?

Do we not want the people and the bad actors to actually have to do what is necessary and lawsuits absolutely are required to get them to do it? But should we not require, or give an opportunity to the small business owner who used all good faith to comply with the law the opportunity to pick something when it might take 5 minutes to fix, instead of making them pay $10,000 or $12,000 when a lawsuit is filed?

Mr. BUCKLAND. Mr. Chairman, Mr. Deutch, with all due respect, if the only issue is the grab bar is two inches off, the business fixes that. Unless you are in a State with damages, there is no money paid out.

Mr. DEUTCH. Well——

Mr. BUCKLAND. You only collect——

Mr. DEUTCH. Excuse me, 1 second. But, no, I just want to correct that, and maybe I misunderstand, but the stories I have heard from the businesses in my district where, in South Florida, where 1 in 5 of these cases are filed, the story I heard from the guy who runs the bagel shop that I stopped in in the morning who just shared another one of these stories with me.

He got hit with a lawsuit for one of these very minor mistakes. He has used all good faith to try to comply, and you are right. He is going to raise it by those couple of inches, and it is going to cost him $10,000 in plaintiff's legal fees, which is a cost that he never should have had to incur.

Mr. BUCKLAND. Well, I am sorry. Unless he has like somehow fought against the original complaint, why would there be attorneys' fees?

Mr. DEUTCH. Mr. Royce, can you answer that question?

Mr. ROYCE. The answer is because the suit is filed before the business owner even knows what the issue is. So to get rid of that lawsuit, you need to—you end up settling it.

Mr. DEUTCH. And all I am trying—I think the Chairman understands this, and the Ranking Member of the Committee understands this. There is no one on this Committee who fights harder to keep the courtroom doors open for people who deserve justice in this country than I do.

Mr. KING. Believe me, he is telling the truth.

Mr. DEUTCH. But in this situation all I think we are looking for is the opportunity for someone, for a small-business owner, to be able to—who has exercised all good faith and has only tried to do the right thing, to be able to continue to do the right thing without being forced to pay an extravagant amount of money; give him the opportunity to fix it and they will. I really appreciate the panel for being here. I think it is a really important discussion. Mr. Chairman, I yield back.

Mr. FRANKS. And I thank the gentleman, and this concludes today's hearing and, without objection, all Members will have 5 legis-

lative days to submit additional written questions for the witnesses, for additional materials for the record. And I want to thank the witnesses and thank the Members and thank the audience for being here, and this hearing is adjourned.

[Whereupon, at 10:30 a.m., the Subcommittee adjourned subject to the call of the Chair.]

APPENDIX

Material Submitted for the Hearing Record

Supplemental material submitted by the Honorable Ken Calvert, a Representative in Congress from the State of California

LEGISLATION: Disability access fix-it bill now law

THE PRESS ENTERPRISE

Small businesses will get an opportunity to fix handicap access violations without liability with Sen. Roth's SB269.

BY RICHARD K. De ATLEY / STAFF WRITER

Published: May 10, 2016 2:24 p.m.

MARK ZALESKI , MARK ZALESKI THE PRESS-ENTERPRISE

A bill that gives small businesses four months to fix disability access issues and avoid California's minimum civil liability of $4,000 for each violation if certain conditions are met, was signed into law Tuesday, May 10, by Gov. Jerry Brown

Riverside Sen. Richard Roth's SB 269 also outlines circumstances that cap the liabilities at $1,000 or $2,000 per violation.

The law takes effect immediately.

It's the second effort by Roth, a Democrat, to create a procedure for small businesses to both fix disability access violations and avoid the penalties of lawsuits that characteristically have been filed in clusters, citing several businesses in the same neighborhood.

The bill was spurred in part by a series of such lawsuits that named several businesses in downtown Riverside. Two plaintiffs filed a total of 48 such suits in Riverside County Superior Court in 2013-14, naming restaurants, cafes, apartment buildings, motels and other businesses.

Brown in 2015 vetoed Roth's previous bill, SB251 which offered tax credits for fixing access violations. The tax credits are gone from SB269, which also reduces the size of an eligible business from 100 to 50 employees.

The latest bill passed the Senate 38-0 and went to Brown's desk in late April. Roth's office noted it did not receive a "no' vote during the entire legislative process.

"SB 269 is a bipartisan, commonsense solution that will guarantee access for disabled Californians by providing small businesses with the tools and resources necessary to comply with state and federal disability access regulations," Roth said in a statement on Tuesday.

"I am glad the Governor agrees with the critical need for this reform, and I am proud to have delivered this victory for California's small businesses and disability community."

The bill outlines measures that will generally allow exemption from minimum statutory damages for 120 days for a qualified small business, following a Certified Access Specialist (CASp) inspection to find possible handicap access violations and recommend fixes.

Among SB269's other features, it defines some technical violations that "are presumed to not cause a person difficulty, discomfort, or embarrassment for the purpose of an award of minimum statutory damage" if they are fixed within 15 days of a complaint.

Among those: "The order in which parking signs are placed or the exact location or wording of parking signs, provided that the parking signs are clearly visible and indicate the location of accessible parking and van-accessible parking."

http://www.pe.com/articles/access-802484-businesses-bill.html

Contact the writer: rdeatley@pe.com or 951 368-9573

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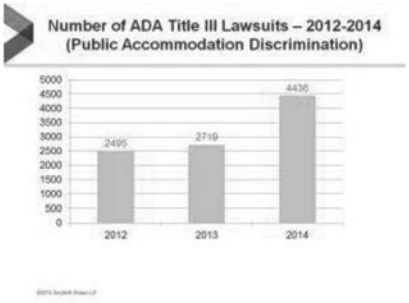
**1Supplemental material submitted by David Weiss,
Executive Vice President & General Counsel, DDR Corp.**

ADA Title III Lawsuits Surge by More than 63%, to Over 4400, In 2014

By Seyfarth Shaw LLP on April 9th, 2015Posted in Barrier Removal, Lawsuits, Investigations & Settlements, Pool Lifts, Title III Access

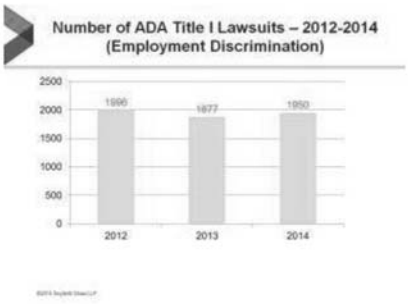
By Minh N. Vu and Susan Ryan

In August 2014, we reported that the number of ADA Title III lawsuits filed against public accommodations rose by nearly 9% in 2013 over 2012. At that time, we predicted that there could be a 40% increase in the number of lawsuits filed in 2014 based on 6 months of data. Now that we have all the data, the actual number is far higher: There was a 63% surge, resulting in a grand total of 4,436 ADA Title III lawsuits filed in 2014.



How Does This Compare to The Number of ADA Employment Lawsuits?

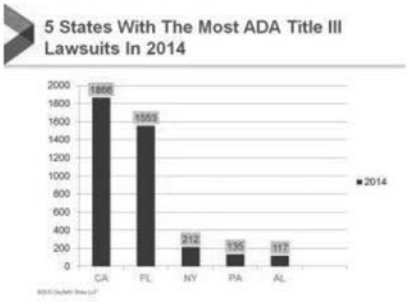
Just to put this into perspective, for comparison purposes we looked at the number of lawsuits filed under Title I of the ADA which prohibits discrimination on the basis of disability in employment. As the below chart shows, those numbers remained very steady in 2012-2014, and numbered well under half the total Title III cases filed in 2014.

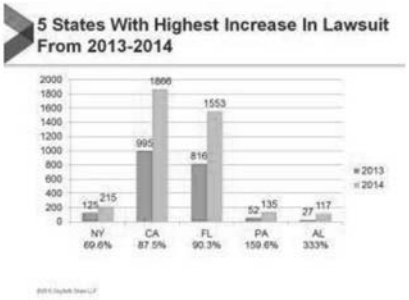


Where Are Most of These Cases Filed?

California continues to lead the country with the highest number of ADA Title III lawsuits (1866), with Florida coming in a close second (1553). New York (212), Pennsylvania (135), and Alabama (117) hold the distant third, fourth, and fifth place slots. These five states also saw the largest percentage increase in the number of lawsuits.

In stark contrast, there was not a single ADA Title III lawsuit filed in 2014 in Idaho, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.





What is driving these higher lawsuit numbers, 25 years after the passage of the ADA?

Although we have not studied every complaint to answer this question, we did notice some trends in 2014 in our own practice. In addition to the usual lawsuits alleging physical access barriers at hotels, retailers, and shopping centers, we handled a number of cases brought by plaintiffs alleging a failure to provide accessible pool lifts, mostly in Florida. Some of these cases were clearly frivolous because the hotels did have pool lifts. Plaintiffs represented by one law firm filed more than 60 class action lawsuits in the Western District of Pennsylvania. Many of these alleged that the parking lots of various retailers, restaurants, and banks do not have compliant accessible parking spaces. We also handled federal class actions alleging that some retailers' point of sale devices are not accessible to the blind.

Who is filing these lawsuits?

We looked at our top five jurisdictions to see who some of the repeat filers were in 2014 under both ADA Title II (state and local government defendants) and Title III (public accommodations (private sector businesses)). In Florida, a plaintiff named Howard Cohan filed 529 such suits. In California, a plaintiff named Martin Vogel filed 124 suits. In Pennsylvania, a plaintiff named Christopher Mielo brought 21 lawsuits. In New York, a plaintiff named Zoltan Hirsch brought 24 lawsuits. In Alabama, a plaintiff named David Higginbotham filed 16 lawsuits.

A Note About Our Methodology

Our data comes from PACER, the federal court electronic docket system. When filing a new lawsuit, a plaintiff has two ADA codes to choose from: "Americans with Disabilities: Employment" or "Americans with Disabilities: Other." The "other" category refers to ADA Titles II or III. Our diligent librarian, Susan Ryan, obtained the ADA Title III case numbers by reviewing each of the case names (and where necessary, the complaints) to eliminate all Title II cases. As far as we know, no one else has undertaken this task, so you are hearing it here first on this blog.

Edited by Kristina M. Launey

Published by SEYFARTH SHAW

ADA Title III
News & Insights

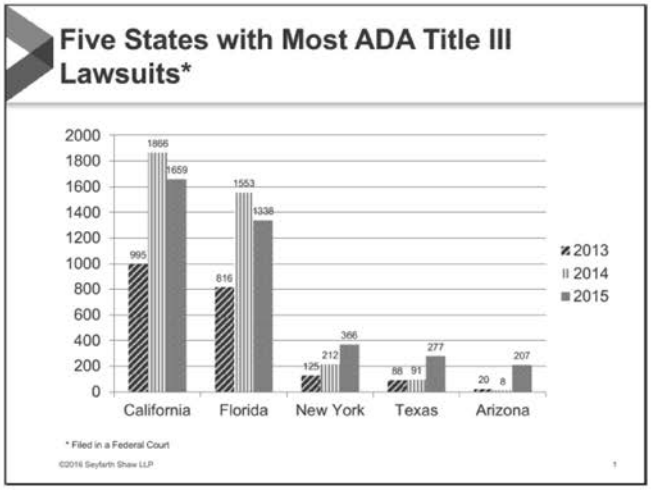
ADA Title III Lawsuits Continue to Rise: 8% Increase in 2015

By Minh Vu, Kristina M. Launey, and Susan Ryan on January 15th, 2016

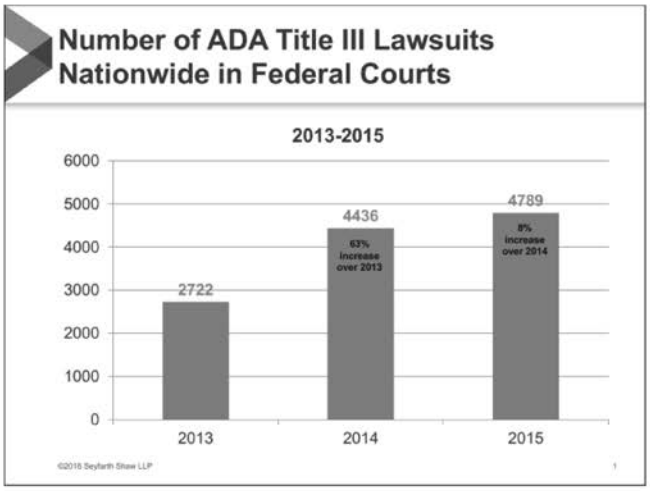
Posted in Barrier Removal, Lawsuits, Investigations & Settlements, Title III Access

Our research department has crunched the numbers from the federal court docket and the verdict is that the ADA Title III plaintiff's bar and their clients are still busy filing lawsuits. Here are the findings:

- In 2015, 4,789 ADA Title III lawsuits were filed in federal court, as compared to 4,436 in 2014. That 8% increase is modest compared to the surge we saw, and reported in 2014. In 2014, the number of ADA Title III lawsuits increased 63% over the 2,722 lawsuits filed nationwide in 2013.



- California, Florida, New York, Texas, and Arizona had the most ADA Title III lawsuits — a total of 3,847 cases. This accounts for 80% of the lawsuits filed nationwide.
- Although California and Florida continue to be the most popular venues for ADA Title III lawsuits, the number of cases filed in those states in 2015 decreased by 11% and 14% respectively.
- Arizona experienced a surge in lawsuits. Plaintiffs in Arizona filed 25 times more cases in 2015 than they did in 2014, for a total of 207 lawsuits in 2015. Other states with substantial increases in the number of lawsuits were Georgia (from 20 to 96), Illinois (from 29 to 84), New York (212 to 366).



- Federal courts in Alaska, Montana, North Dakota, South Dakota, and Wyoming had no ADA Title III lawsuits.
- Who are the plaintiffs filing these suits? Our docket review revealed the top filers in 2015 were:
  - Howard Cohan (FL/IL/LA) – 429
  - Martin Vogel (CA) – 198
  - Theresa Brooke (AZ/CA) – 175
  - Patricia/Pat Kennedy (FL) – 173
  - Tal Hilson (FL) – 136
  - Jon Deutsch (TX) – 113
  - Michael Rocca (CA) – 102
  - Shirley Lindsay (CA) – 83

We do wish to add a disclaimer: Our research involved a painstaking manual process of going through all federal cases that were coded as "ADA-Other" and culling out the ADA Title II cases in which the defendants are state and local governments. In other words, there is always the possibility of some human error and we hope you'll forgive us if the numbers are slightly off. And, we only counted federal filings. Some plaintiffs — such as those in California, which has ADA Title III-corollary state statutes — may file lawsuits in state court that never make it to federal court, and thus, are not included in our numbers.

Tags: accessibility, ADA Title III, ADA Title III Lawsuits, Arizona, Barriers, California, Florida, lawsuits,

New York, Texas

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Letter from Elizabeth H. Taylor, Vice President, Government Relations and General Counsel, International Franchise Association

IFA INTERNATIONAL FRANCHISE ASSOCIATION | FRANCHISING® Building local businesses, one opportunity at a time.

May 19, 2016

The Honorable Trent Franks
U.S. House of Representatives
Committee on the Judiciary
2435 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Steve Cohen
U.S. House of Representatives
Committee on the Judiciary
2404 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Franks and Ranking Member Cohen:

On behalf of the 780,000 franchise small business establishments nationwide and the nearly 9 million workers they employ, I write to thank you for hosting today's hearing on H.R. 3765, "The ADA Education and Reform Act of 2015." The IFA recognizes the Americans with Disabilities Act ("ADA") is a landmark law that has improved the lives of countless disabled Americans. Now we hope that Congress will consider the reforms outlined in H.R. 3765 to prevent frivolous lawsuits against business owners that do not result in improvements to public accommodations.

The practice of "drive-by" lawsuits has become all too common in recent years. From 2013 to 2014, the number of ADA Title III lawsuits – those dealing with public accommodation – surged by more than 63%. Many of these lawsuits are only intended to benefit trial attorneys, and some are filed without details that would be needed for the business owner to cure the alleged problem. Many business owners are forced to pay for settlements that only benefit unscrupulous attorneys when those payments could otherwise be used to fix alleged violations. ADA access violations could be addressed more quickly and cost-effectively through the widely-accepted practice of providing the property owner with proper notice and a timeframe to fix the alleged problems.

H.R. 3765 is a bipartisan, common-sense bill specifically targeting this section of the ADA. The bill provides for increased education for state and local governments and property owners on effective strategies for promoting access to public accommodations for persons with a disability and prohibits vague and deceptive demand letters. The bill also includes a "notice and cure" provision to allow property owners to take corrective action. If a business fails to correct or make substantial progress in correcting an identified violation following a notice and cure period, all of a plaintiff's legal rights for seeking recourse under the ADA still apply.

We believe this legislation will strengthen the ADA and ensure greater access for the disabled. And, it will allow franchise business owners to better serve their customers while preserving the protections provided by the ADA.

Sincerely,

Elizabeth Taylor

Elizabeth H. Taylor
Vice President, Government Relations and General Counsel
International Franchise Association

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Letter from Amina Donna Kruck, VP Advocacy, Ability360

ABILITY360

May 17, 2016

The Honorable Trent Franks
Chair, House Judiciary Subcommittee Constitution and Civil Justice
2435 Rayburn House Office Building
Washington, DC 20515

The Honorable Steve Cohen
Ranking Member, House Judiciary Subcommittee Constitution and Civil Justice 2404 Rayburn House Office Building
Washington, DC 20515

Re: Letter of Opposition to the Americans with Disabilities Act (ADA) Education and Reform Act of 2015 (H.R. 3765)

Dear Chair Franks and Ranking Member Cohen:

Ability360 is a non-profit in Phoenix, Arizona providing programs and advocacy by and for individuals with disabilities and their families. We write in opposition to the ADA Education and Reform Act of 2015 (H.R. 3765). Ability360 supports local and national public policy that ensures full equality, self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. Since the passage of the Americans with Disabilities Act, in 1990, the United States has become the most accessible country in the world. Disability can happen to anyone, anytime regardless of their race, religion, geographic location, gender or political party. The ADA makes it possible for people with disabilities, young and old, to participate fully in their communities to: conduct business, shop, work, receive medical care, visit family and recreate.

Almost 26 years ago, the ADA was carefully crafted to take the needs of covered entities such as businesses into account. It was the disability community that gave up the ability to receive damages from failure to comply with the federal ADA by only allowing injunctive relief and attorney's fees for violations of the law. Unfortunately, almost 26 years after enactment, there are still organizations, businesses, and companies who have not complied with this important law denying our citizens with disabilities the access.

A number of bills, like H.R. 3765, have been introduced in Congress that would create barriers to the civil rights and full access for persons with disabilities. No other civil rights laws do such a thing. These bills seek to limit the power of the ADA to create an accessible community, regardless of disability, and reduce compliance with the law.

The ADA Education and Reform Act of 2015 is one of these bills, and it goes even further by ***criminalizing*** attempts to enforce a person's rights under the law. **There is no other civil rights legislation where it could be a crime to file a complaint to enforce your civil rights**. There is and never were any ADA compliance police. The bill was structured for citizens to file complaints when they were denied access under the ADA guidelines. If a business has decided to not comply with the requirements of the ADA after more than 25 years, there is no reason a person should have to wait even longer for enforcement of the law and their civil rights! Would we expect an individual who is not allowed to enter a restaurant because of their race, gender or religion, have to wait six months before seeking to enforce their civil rights that protect them from discrimination?

The disability community already compromised with the passage of the ADA by not allowing individuals to seek damages from violations of their civil rights. Now

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legislation like H.R. 3765 seeks to further erode the civil rights of people with disabilities by criminalizing actions taken to enforce their civil rights or delay achieving those rights. Because H.R. 3765 would erode the civil rights of people with disabilities, we must oppose this legislation. We look forward to an opportunity to speak with you and your staff about our concerns.

Yours Truly,

Amina Donna Kruck
VP Advocacy
Ability360
602-443-0722
aminak@abilty360.org

Letter from Bridgette Moore, Mayor, City of Wildomar, Wildomar, CA

Bridgette Moore, Mayor
Timothy Walker, Mayor Pro Tem
Bob Cashman, Council Member
Marsha Swanson, Council Member
Ben J. Benoit Council Member

23873 Clinton Keith Rd, Ste 201
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May 25, 2016

Chairman Bob Goodlatte
Judiciary Committee
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte,

As you know, far too many small businesses have fallen victim to abusive lawsuits filed under the Americans with Disabilities Act (ADA). That is why I am writing to you in support of H.R. 241, the ACCESS (ADA Compliance for Customer Entry to Stores and Services) Act. The ACCESS Act is a commonsense piece of legislation that would alleviate the financial burden small businesses are facing, while still fulfilling the purpose of the ADA.

According to recent figures, California is home to more federal disability lawsuits than the next four states combined. As of 2014, 31 individuals made up at least 56% of federal disability lawsuits in California. Under the ACCESS Act, any person aggrieved by a violation of the ADA would provide the owner or operator with a written notice of the violation, specific enough to allow such owner or operator to identify the barrier to their access. Within 60 days the owner or operator would be required to provide the aggrieved person with a description outlining improvements that would be made to address the barrier. The owner or operator would then have 120 days to make the improvement. The failure to meet any of these conditions would allow the lawsuit to go forward.

In closing, I would encourage you and the Judiciary Committee to report the ACCESS Act out of committee as soon as possible so that it can be approved by the House of Representatives in the near future.

Sincerely,

Bridgette Moore, Mayor
City of Wildomar

Cc: U.S. Representative Ken Calvert, 42nd District
2205 Rayburn Building
Washington, DC 20515